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United Nations

Report of the Committee against Torture

Thirty-first session
(10-21 November 2003)
Thirty-second session
(3-21 May 2004)

General Assembly
Official Records
Fifty-ninth session
Supplement No. 44 (A/59/44)

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NOTE

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 21 May 2004, the closing date of the thirty-second session of the Committee against Torture, there were 136 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.

2. Since the last report, the Congo, Maldives and Swaziland have become parties to the Convention. Furthermore, Bosnia and Herzegovina, Chile and Ukraine have made the declaration under articles 21 and 22, whereas Burundi and Guatemala made the declaration under article 22. Ukraine withdrew its reservation to article 20 of the Convention. The list of States which have signed, ratified or acceded to the Convention is contained in annex I to the present report. The States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention are listed in annex II. The States parties that have made declarations provided for in articles 21 and 22 of the Convention are listed in annex III.

3. The text of the declarations, reservations or objections made by States parties with respect to the Convention may be found in the United Nations web site (*www.un.org* - Site index - treaties).

B. Sessions of the Committee

4. The Committee against Torture has held two sessions since the adoption of its last annual report. The thirty-first session (574th to 591st meetings) was held at the United Nations Office at Geneva from 10 to 21 November 2003, and the thirty-second session (592nd to 619th meetings) was held from 3 to 21 May 2004. An account of the deliberations of the Committee at these two sessions is contained in the relevant summary records (CAT/C/SR.574-619).

C. Elections, membership and attendance at sessions

5. In accordance with article 17 of the Convention, the Ninth Meeting of States Parties to the Convention was held at the United Nations Office at Geneva on 26th November 2003. The following five members of the Committee were elected or re-elected for a term of four years beginning on 1 January 2004: Mr. Guibril Camara (Senegal), Ms. Felice Gaer (United States of America), Mr. Claudio Grossman (Chile), Mr. Andreas Mavrommatis (Cyprus) and Mr. Julio Prado Vallejo (Ecuador). The list of members with their terms of office appears in annex IV to the present report.

D. Solemn declaration by the newly elected members

6. At the 574th meeting on 10 November 2003, Mr. Grossman, designated to replace Mr. Alejandro González Poblete, made the solemn declaration upon assuming his duties, in accordance with rule 14 of the rules of procedure. At the 592nd meeting, on 3 May 2004, Mr. Prado Vallejo, newly elected member, also made his solemn declaration.

E. Election of officers

7. At the 592nd meeting, on 3 May 2004, the Committee elected the following officers for a term of two years, in accordance with article 18, paragraph 1, of the Convention and rules 15 and 16 of the rules of procedure:

Chairperson: Mr. Fernando Mariño

Vice-Chairpersons: Ms. Felice Gaer

Mr. Claudio Grossman

Mr. Yu Mengjia

Rapporteur: Mr. Sayed El Masry

F. Agendas

8. At its 574th meeting, on 10 November 2004, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General (CAT/C/76) as the agenda of its thirty-first session:

1. Opening of the session by the representative of the Secretary-General.
2. Solemn declaration by the newly elected member of the Committee.
3. Election of a vice-chairperson of the Committee.
4. Adoption of the agenda.
5. Organizational and other matters.
6. Submission of reports by States parties under article 19 of the Convention.
7. Consideration of reports submitted by States parties under article 19 of the Convention.
8. Consideration of information received under article 20 of the Convention.
9. Consideration of communications under article 22 of the Convention.

9. At its 592nd meeting, on 3 May 2004, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General (CAT/C/82) as the agenda of its thirty-second session:

1. Opening of the session by the representative of the Secretary-General.
2. Solemn declaration by the newly elected member of the Committee.

3. Election of the officers of the Committee.

4. Adoption of the agenda.

5. Organizational and other matters.

6. Submission of reports by States parties under article 19 of the Convention.

7. Consideration of reports submitted by States parties under article 19 of the Convention.

8. Consideration of information under article 20 of the Convention.

9. Consideration of communications under article 22 of the Convention.

10. Annual report of the Committee on its activities.

G. Pre-sessional working group

10. During the period under review, the working group was composed of Mr. El Masry, Mr. Mariño, Mr. Yakovlev and Mr. Yu. The group met from 3 to 7 November 2003, prior to the thirty-first session, and from 26 to 30 April 2004, prior to the thirty-second session. Its agenda was devoted to the consideration of communications under article 22 of the Convention and list of issues to be transmitted to States parties whose periodic reports would be examined at the two sessions. The group reviewed the information brought to its attention and made recommendations to the Committee.

11. At its thirty-second session the Committee decided that, in the future, the lists of issues would be adopted by the Committee on the basis of a draft submitted by the respective country rapporteurs and that the pre-sessional working group would deal exclusively with communications under article 22.

H. Lists of issues

12. The working group which met prior to the thirty-first and thirty-second sessions forwarded to the Committee draft lists of issues to be sent to States whose periodic reports would be considered at the thirty-second and thirty-third sessions, namely, Bulgaria, Chile, Croatia, Czech Republic, Germany, Monaco and New Zealand (thirty-second session), and Argentina, Greece and Canada (thirty-third session).[1] The Committee approved such lists which were subsequently transmitted to the respective States. At the thirty-second session the Committee also decided to transmit a list of issues to Togo, scheduled to be considered at the thirty-third session, in November 2004, in the absence of a report. The initial report of Togo was overdue since 1988. Following its decision, at the thirty-second session, to schedule the fourth periodic report of the United Kingdom for examination at the thirty-third session, the Committee asked the country rapporteurs to prepare a list of issues after the session and transmit it to the State party.

13. In view of the introduction of the list of issues into its working methods, the Committee decided, at its thirty-second session, that its dialogue with delegations from States parties should be structured along the following lines:

(a) The dialogue will start with a presentation by the delegation in which it will: (i) refer to new developments that have occurred in the country since the submission of the report; and (ii) respond to the list of issues. The presentation should not last more than 90 minutes. Although not required to do so, the delegation may, at its discretion, submit the responses also in writing, in which case it should send them to the secretariat two weeks before the dialogue with the Committee.

(b) After the introduction, the rapporteur, co-rapporteur and other members will make their comments and ask additional questions.

(c) The delegation will return the following day to respond to the new questions and/or to provide additional information on the initial list of issues. Committee members can ask other questions and make final remarks.

14. In view of the substantial increase in the amount of information provided by States parties, both oral and written, as a result of the adoption, at their request, of the lists of issues, the Committee requested, at its thirty-second session, to be provided with additional resources in terms of secretariat staff, translation services and meeting time.

I. Thematic rapporteurs

15. The Committee has designated some of its members to act as rapporteurs on specific themes of a substantive or procedural character. The themes for which rapporteurs have been appointed are the following:

Follow-up to article 19: Ms. Gaer (alternate: Mr. El Masry)

Follow-up to article 22: Mr. El Masry (alternate: Ms. Gaer)

Follow-up to article 20: Mr. Rasmussen

Overdue reports: Mr. Mariño, Mr. Rasmussen

New complaints and interim measures: Mr. Mavrommatis

Gender issues: Ms. Gaer

Child issues: Mr. Rasmussen

J. Participation of Committee members in other meetings

16. During the period under consideration Mr. Peter Burns participated in the 15th meeting of persons chairing the human rights treaty bodies, held from 23 to 27 June 2003. Mr. Burns and Mr. Rasmussen participated in the second inter-committee meeting of the human rights treaty bodies, which took place from 18 to 20 June 2003.

K. Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture

17. The following joint statement was adopted to be issued on 26 June 2004, the International Day in Support of Victims of Torture:

> "The United Nations Committee against Torture, the Special Rapporteur of the Commission on Human Rights on the question of torture, the Chairperson of the twenty-second session of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the Acting United Nations High Commissioner for Human Rights make the following statement on the occasion of the United Nations International Day in Support of Victims of Torture:
>
> "We wish to take this opportunity to express our serious concern about continuing reports of torture and other cruel, inhuman or degrading treatment or punishment taking place in many parts of the world.
>
> "There is an absolute prohibition of torture under international human rights and humanitarian law. The non-derogable nature of this prohibition is enshrined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as in several other instruments. States must take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction and no exceptional circumstances whatsoever, whether a state of war, or a threat of war, internal political instability, or any other public emergency may be invoked as a justification of torture.
>
> "Under international law States also have the duty to investigate torture whenever it occurs, prosecute the guilty parties and award compensation and the means of rehabilitation to the victims. Too often, public authorities are remiss in fulfilling their duties in this respect, allowing torture to continue to occur with impunity.
>
> "On this International Day in Support of Victims of Torture, we pay tribute to all Governments, organizations of civil society and individuals who are engaged in activities aimed at preventing torture, punishing it and ensuring that all victims obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible. We also express our gratitude to all donors to the United Nations Voluntary Fund for Victims of Torture and hope that contributions to the Fund will continue to increase, so that more victims of torture and members of their families can receive the assistance they need."

Note

[1] The lists of issues can be consulted on the web site of the Office of the High Commissioner for Human Rights, *www.unhchr.org*.

II. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

18. During the period covered by the present report 12 reports were submitted to the Secretary-General. Initial reports were submitted by Albania (CAT/C/28/Add.6), Bahrain (CAT/C/47/Add.4) and Uganda (CAT/C/5/Add.32). Second reports were submitted by Sri Lanka (CAT/C/48/Add.2) and Nepal (CAT/C/33/Add.6). Third reports were received from Ecuador (CAT/C/39/Add.6), Austria (CAT/C/34/Add.18), France (CAT/C/34/Add.19) and Georgia (CAT/C/66/Add.1). Fourth reports were submitted by the United Kingdom (CAT/C/67/Add.2), Italy (CAT/C/67/Add.3) and Guatemala (CAT/C/74/Add.1).

19. As at 21 May 2004, the situation of overdue reports, a total of 176, was as follows:

State party	Date on which the report was due
Initial reports	
Togo	17 December 1988
Guyana	17 June 1989
Guinea	8 November 1990
Somalia	22 February 1991
Bosnia and Herzegovina	5 March 1993
Seychelles	3 June 1993
Cape Verde	3 July 1993
Burundi	19 March 1994
Antigua and Barbuda	17 August 1994
Ethiopia	12 April 1995
Chad	7 July 1996
Tajikistan	9 February 1996
Côte d'Ivoire	16 January 1997
Democratic Republic of the Congo	16 April 1997
Malawi	10 July 1997
Honduras	3 January 1998
Kenya	22 March 1998
Bangladesh	3 November 1999
Niger	3 November 1999
South Africa	8 January 2000
Burkina Faso	2 February 2000
Mali	27 March 2000
Turkmenistan	25 July 2000
Japan	29 July 2000
Mozambique	14 October 2000

State party	Date on which the report was due
Qatar	9 February 2001
Ghana	6 October 2001
Botswana	7 October 2001
Gabon	7 October 2001
Lebanon	3 November 2001
Sierra Leone	24 May 2002
Nigeria	27 July 2002
Saint Vincent and the Grenadines	30 August 2002
Lesotho	11 December 2002
Mongolia	22 February 2003
Ireland	10 May 2003
Holy See	25 July 2003
Equatorial Guinea	6 November 2003
Timor Leste	15 May 2004

Second periodic reports

Afghanistan	25 June 1992
Belize	25 June 1992
Philippines	25 June 1992
Uganda	25 June 1992
Togo	17 December 1992
Guyana	17 June 1993
Brazil	27 October 1994
Guinea	8 November 1994
Somalia	22 February 1995
Romania	16 January 1996
Serbia and Montenegro	9 October 1996
Yemen	4 December 1996
Jordan	12 December 1996
Bosnia and Herzegovina	5 March 1997
Benin	10 April 1997
Latvia	13 May 1997
Seychelles	3 June 1997
Cape Verde	3 July 1997
Cambodia	13 November 1997
Burundi	19 March 1998

State party	Date on which the report was due
Slovakia	27 May 1998
Antigua and Barbuda	17 August 1998
Costa Rica	10 December 1998
Ethiopia	12 April 1999
Albania	9 June 1999
United States of America	19 November 1999[a]
The former Yugoslav Republic of Macedonia	11 December 1999
Namibia	27 December 1999
Republic of Korea	7 February 2000
Tajikistan	9 February 2000
Cuba	15 June 2000
Chad	8 July 2000
Republic of Moldova	27 December 2000
Côte d'Ivoire	16 January 2001
Democratic Republic of the Congo	16 April 2001
El Salvador	16 July 2001
Lithuania	1 March 2001
Kuwait	6 April 2001
Malawi	10 July 2001
Honduras	3 January 2002
Kenya	22 March 2002
Kyrgyzstan	4 September 2002
Saudi Arabia	21 October 2002
Bahrain	4 April 2003
Kazakhstan	24 September 2003
Bangladesh	3 November 2003
Niger	3 November 2003
Zambia	5 November 2003
Indonesia	26 November 2003
South Africa	8 January 2003
Burkina Faso	2 February 2004
Mali	27 March 2004
Bolivia	11 May 2004

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[a] Requested by the Committee for 19 November 2001.

State party	Date on which the report was due
Third periodic reports	
Afghanistan	25 June 1996
Belize	25 June 1996
Philippines	25 June 1996
Senegal	25 June 1996
Uganda	25 June 1996
Uruguay	25 June 1996
Togo	17 December 1996
Guyana	17 June 1997
Turkey	31 August 1997
Tunisia	22 October 1997[b]
Libyan Arab Jamahiriya	14 June 1998
Algeria	11 October 1998
Brazil	27 October 1998
Guinea	8 November 1998
Somalia	22 February 1999
Malta	12 October 1999
Liechtenstein	1 December 1999
Romania	16 January 2000
Nepal	12 June 2000
Serbia and Montenegro	9 October 2000
Yemen	4 December 2000
Jordan	12 December 2000
Monaco	4 January 2001
Bosnia and Herzegovina	5 March 2001
Benin	10 April 2001
Latvia	13 May 2001
Seychelles	3 June 2001
Cape Verde	3 July 2001
Cambodia	13 November 2001
Mauritius	7 January 2002

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[b] Requested by the Committee for 30 November 1999.

State party	Date on which the report was due
Burundi	19 March 2002
Slovakia	27 May 2002
Slovenia	14 August 2002
Antigua and Barbuda	17 August 2002
Armenia	12 October 2002
Costa Rica	10 December 2002
Sri Lanka	1 February 2003
Ethiopia	12 April 2003
Albania	9 June 2003
United States of America	19 November 2003
The former Yugoslav Republic of Macedonia	11 December 2003
Namibia	27 December 2003
Republic of Korea	7 February 2004
Tajikistan	9 February 2004

Fourth periodic reports

Afghanistan	25 June 2000
Belarus	25 June 2000
Belize	25 June 2000
Bulgaria	25 June 2000
Cameroon	25 June 2000
France	25 June 2000
Hungary	25 June 2000
Mexico	25 June 2000
Philippines	25 June 2000
Russian Federation	25 June 2000
Senegal	25 June 2000
Uganda	25 June 2000
Uruguay	25 June 2000
Austria	27 August 2000
Panama	22 September 2000
Togo	17 December 2000
Colombia	6 January 2001
Ecuador	28 April 2001
Guyana	17 June 2001
Peru	5 August 2001

State party	Date on which the report was due
Turkey	31 August 2001
Tunisia	22 October 2001
Chile	29 October 2001
China	2 November 2001
Netherlands	19 January 2002
Portugal	10 March 2002
Libyan Arab Jamahiriya	14 June 2002
Poland	24 August 2002
Australia	6 September 2002
Algeria	11 October 2002
Brazil	27 October 2002
Guinea	8 November 2002
New Zealand	8 January 2003
Somalia	22 February 2003
Paraguay	10 April 2003
Malta	12 October 2003
Germany	20 October 2003
Liechtenstein	1 December 2003
Romania	16 January 2004

20. At the request of the Committee, two members, Mr. Mariño and Mr. Rasmussen, continued to maintain contacts with States parties whose initial reports were overdue by five years or more, in order to encourage the submission of such reports. Given the lack of response from the Government of Togo to the requests of the members, the Committee decided to consider the situation in Togo as it pertains to the Convention, without a report, at its thirty-third session.

21. At its thirty-second session the Committee decided to address a letter to the Government of the United States calling its attention to the fact that its second periodic report, requested by the Committee for 19 November 2001, had not been submitted yet. The Committee asked the State party to submit the report by 1 October 2004. The Committee drew the State party's attention, in particular, to article 2, paragraph 1, of the Convention, according to which each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Finally, the letter indicated that the report should include updated information concerning the situation in places of detention in Iraq.

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

22. At its thirty-first and thirty-second sessions, the Committee considered reports submitted by 13 States parties, under article 19, paragraph 1, of the Convention. The following reports were before the Committee at its thirty-first session:

Cameroon: third periodic report	CAT/C/34/Add.17
Colombia: third periodic report	CAT/C/39/Add.4
Latvia: initial report	CAT/C/21/Add.4
Lithuania: initial report	CAT/C/37/Add.5
Morocco: third periodic report	CAT/C/66/Add.1 and Corr.1
Yemen: initial report	CAT/C/16/Add.10

23. The following reports were before the Committee at its thirty-second session:

Bulgaria: third periodic report	CAT/C/34/Add.16
Chile: third periodic report	CAT/C/39/Add.5/Corr.1
Croatia: third periodic report	CAT/C/54/Add.3
Czech Republic: third periodic report	CAT/C/60/Add.1
Germany: third periodic report	CAT/C/49/Add.4
Monaco: second periodic report	CAT/C/38/Add.2
New Zealand: third periodic report	CAT/C/49/Add.3

24. In accordance with rule 66 of the rules of procedure of the Committee, representatives of all the reporting States were invited to attend the meetings of the Committee when their reports were examined. All of the States parties whose reports were considered sent representatives to participate in the examination of their respective reports.

25. Country rapporteurs and alternate rapporteurs were designated for each of the reports considered. The list appears in annex V to the present report. The Committee's working methods when considering reports under article 19 of the Convention are contained in annex VI.

26. In connection with its consideration of reports, the Committee also had before it:

(a) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/4/Rev.2);

(b) General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14/Rev.1).

27. The following sections contain the text of conclusions and recommendations adopted by the Committee with respect to the above-mentioned States parties' reports. Furthermore, at its thirty-first session the Committee noted that no information had been received from the Government of Cambodia with respect to its provisional conclusions and recommendations on this country[1] and decided to consider these as final.

BULGARIA*

28. The Committee considered the third periodic report of Bulgaria (CAT/C/34/Add.16) at its 612th and 614th meetings (CAT/C/SR.612 and 614), held on 17 and 18 May 2004, and adopted the following conclusions and recommendations.

A. Introduction

29. The Committee welcomes the submission of the third periodic report of Bulgaria and the opportunity to continue its dialogue with the State party.

30. While noting that the report only covers the period up to May 2000, the Committee appreciates the detailed responses to the written list of issues and the replies provided to the questions raised by the Committee members during the dialogue, which furnished information concerning measures to implement the Convention taken by the State party since 2000.

B. Positive aspects

31. The Committee notes the following positive developments:

(a) Ongoing efforts by the State party to reform its legislation related to the implementation of the Convention and aimed at strengthening the protection of human rights. In particular, the Committee welcomes the following:

(i) The entry into force of the Law on the Ombudsman on 1 January 2004;

(ii) The adoption by the National Assembly of the Law on the Protection against Discrimination on 16 September 2003 and other practical measures in the field of protection against discrimination, such as the recruitment of Roma into the police force;

(iii) The entry into force of the new Law on Asylum and Refugees on 1 December 2002, notably the establishment of the State Agency for Refugees as the single central refugee authority deciding on asylum, as well as the introduction of the possibility of judicial review for decisions taken in the accelerated procedure;

(iv) The Code of Conduct of the Policeman adopted and introduced into practice by order of the Minister of the Interior in October 2003;

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* Also published as CAT/C/CR/32/6.

(b) The issuance of instruction No. I-167 of the Minster of the Interior of 23 July 2003 establishing procedures to be followed by the police upon detention of persons at the structural units of the Ministry of the Interior;

(c) The setting up of a specialized Human Rights Commission within the National Police Service in August 2000, with a network of regional coordinators;

(d) The transfer of the investigation detention facilities to the Ministry of Justice in January 2000;

(e) The access given to non-governmental organizations, such as the Bulgarian Helsinki Committee, to visit prisons on a regular basis;

(f) The information provided by the representative of the State party during the dialogue that 13 underground investigative detention (pre-trial) facilities were closed in April 2004 and that the State party is seeking urgent solutions for the remaining 5 underground facilities;

(g) The cooperation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and information offered by the representative of the State party that it has authorized the publication of the report on the visit by the CPT in 2002.

C. Subjects of concern

32. The Committee expresses concern about the following:

(a) The absence in domestic law of a comprehensive definition of torture as set out in article 1 of the Convention;

(b) Numerous allegations of ill-treatment of persons in custody, in particular during police interviews, which may amount to torture and which disproportionately affect the Roma;

(c) The lack of an independent system to investigate complaints, and that allegations of ill-treatment are not always investigated promptly and impartially, resulting in an apparent situation of impunity for those responsible;

(d) The reported lack of prompt and adequate access by persons in custody to legal and medical assistance and to family members, and that access to free legal aid is quite limited and ineffective in practice. Furthermore, the reported inconsistencies in providing the required medical records to detainees hinder their ability to lodge complaints and seek redress;

(e) Poor conditions in homes for persons with mental disabilities and the insufficient steps taken thus far by the authorities to address this situation, including the failure to amend the legislation relating to involuntary placement in such an institution for purposes of evaluation and the lack of judicial appeal and review procedures;

(f) The legislative and other measures to ensure full respect of the provisions of article 3 of the Convention continue to be insufficiently effective, and that the allegations regarding the expulsion of foreigners, especially by order of the National Security Service on national security grounds, is not subject to judicial review;

(g) The insufficient data relating to compensation and rehabilitation available to victims of torture or their dependants in accordance with article 14 of the Convention;

(h) The extremely poor material conditions prevailing in detention facilities, in particular in investigative detention facilities, some of which are still underground or lack basic facilities for outdoor activities, where persons can be held for up to two years, and the lack of independent inspections of such places;

(i) The imposition of a particularly strict regime, notably for the first five years, upon all prisoners serving life sentences.

D. Recommendations

33. **The Committee recommends that the State party:**

(a) Adopt a definition of torture that covers all the elements contained in article 1 of the Convention and incorporate into the Penal Code a definition of a crime of torture that clearly reflects this definition. Furthermore, the Committee invites the State party to consider the advisability of incorporating into law the provisions of Ministry of the Interior instruction No. I-167;

(b) Strengthen the safeguards provided in the Code of Criminal Procedure against ill-treatment and torture and pursue efforts to reduce incidents of ill-treatment by police and other public officials, and devise modalities for collecting disaggregated data and monitoring the occurrence of such acts in order to address the issue more effectively. The State party is encouraged to pursue its efforts to recruit persons of Roma origin into the police;

(c) Take measures to establish an effective, reliable and independent complaint system to initiate and undertake prompt and impartial investigations into all allegations of ill-treatment or torture and to punish those found responsible. The Committee requests that the State party provide it with statistical data regarding such reported cases and the results of the investigations, disaggregated by, inter alia, gender, ethnic group, geographical region and type and location of places of deprivation of liberty where they occurred;

(d) Ensure that, in law as well as in practice, all persons deprived of their liberty are duly registered at the place of custody and guaranteed, and informed of, the rights to have access to counsel, to contact next of kin and to a doctor. In this respect an independent free legal aid system for detainees should be established. Strict rules on the maintenance of medical records for all detained persons should be established and rigorously adhered to;

(e) Undertake all necessary measures to address the situation in homes and hospitals of persons with mental disabilities to ensure that the living conditions, therapy and rehabilitation provided are not in violation of the requirements of the Convention. The Committee also urges the State party to ensure that the placement of children in social care homes is regularly reviewed. It urges the State party to provide monitoring and reassessment of diagnoses by specialists, with appropriate appeal procedures;

(f) Ensure that no person is expelled, returned or extradited to a country where there are substantial grounds for believing that he/she would be in danger of being subjected to torture and that, in accordance with article 2, paragraph 2, of the Convention, exceptional circumstances are not invoked as a justification for so doing and to this end, consider measures to enable monitoring at airports, borders and other points of removal;

(g) Strengthen its efforts to avoid any act not in conformity with the Convention regarding admittance of asylum-seekers into the territory and strengthen cooperation between the State Agency for Refugees and the Ministry of the Interior;

(h) Ensure that all persons who have been victims of a violation of their rights under the Convention have access, in law as well as in practice, to the means of obtaining redress, including an enforceable right to fair and adequate compensation;

(i) Take measures to improve the conditions in detention facilities, in particular the investigative detention facilities, with a view to closing the remaining five facilities that are underground, and ensure that all detention facilities provide at least minimal outdoor exercise for detainees;

(j) Ensure close monitoring of inter-prisoner and other violence, including sexual violence, in detention facilities and social care homes, with a view to preventing it. The State party is requested to provide disaggregated data on this problem in the next periodic report;

(k) Review the regime of detainees serving life sentences, including those serving life sentence without possibility of parole.

34. **The Committee recommends that the State party circulate and make publicly available in the country the State party's report to the Committee and the present conclusions and recommendations, in appropriate languages, through official web sites, the media and non-governmental organizations.**

35. **The Committee requests the State party to provide, within one year, information in response to the Committee's recommendations in paragraph 33 (b), (c), (d), (i) and (k), above.**

36. **The Committee recommends that the State party submit its next periodic report on 25 June 2008, the due date of the fifth periodic report. That report should combine the fourth and fifth periodic reports.**

CAMEROON*

37. The Committee considered the third periodic report of Cameroon (CAT/C/34/Add.17) at its 585th, 588th and 590th meetings, held on 18, 19 and 20 November 2003 (CAT/C/SR.585, 588 and 590), and adopted the following conclusions and recommendations.

A. Introduction

38. The Committee welcomes the third report of Cameroon, which was prepared in conformity with the Committee's guidelines and contains responses to the Committee's previous recommendations. It nevertheless notes that the report, which was submitted at the end of 2002, covers only the period 1996-2000. The Committee welcomes the presence of a delegation of high-level experts to reply to the many questions put to them.

B. Positive aspects

39. The Committee takes note with satisfaction of the following:

(a) The State party's efforts to pass legislation to give effect to the Convention;

(b) The dissolution, in 2001, of the Douala operational command responsible for combating highway robbery, as recommended by the Committee;

(c) The increase in the number of police officers, in conformity with the Committee's recommendation;

(d) The plan to build additional prisons in order to remedy prison overcrowding, and the collective pardon granted in November 2002 enabling 1,757 detainees to be immediately released;

(e) The assurance given by the delegation that the verification of the individual situations of detainees and appellants will eventually result in the release of the range of persons held in pre-trial detention, notably juveniles, women and sick persons;

(f) The proposed restructuring of the National Committee on Human Rights and Freedoms to make it more independent of the executive and give it greater prominence;

(g) The current finalization of a law against violence against women;

(h) The establishment of the Ad Hoc Technical Committee for Implementation of the Rome Statute of the International Criminal Court, with a view to ratification of that Statute;

(i) The establishment of nine new courts in 2001

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* Also published as CAT/C/CR/31/6.

C. Subjects of concern

40. The Committee recalls that, in 2000, it found that torture seemed to be a very widespread practice in Cameroon, and expresses concern at reports that this situation still exists. It is troubled by the sharp contradictions between consistent allegations of serious violations of the Convention and the information provided by the State party. In particular, the Committee declares serious concern about:

(a) Reports of the systematic use of torture in police and gendarmerie stations after arrest;

(b) The continued existence of extreme overcrowding in Cameroonian prisons, in which living and hygiene conditions would appear to endanger the health and lives of prisoners and are tantamount to inhuman and degrading treatment. Medical care reportedly has to be paid for, and the separation of men and women is not always ensured in practice. The Committee notes with particular concern the large number of deaths at Douala central prison since the beginning of the year (25 according to the State party, 72 according to non-governmental organizations);

(c) Reports of torture, ill-treatment and arbitrary detention perpetrated under the responsibility of certain traditional chiefs, sometimes with the support of the forces of law and order.

41. The Committee notes with concern that:

(a) The draft code of criminal procedure has still not been adopted;

(b) The period of police custody may, under the draft code of criminal procedure, be extended by 24 hours for every 50 kilometres of distance between the place of arrest and the place of custody;

(c) The time limits on custody are reportedly not respected in practice;

(d) The periods of police custody under Act No. 90/054 of 19 December 1990 to combat highway robbery (15 days, renewable) and Act No. 90/047 of 19 December 1990 on states of emergency (up to 2 months, renewable) are too long;

(e) The use of registers in all places of detention has not yet been systematically organized;

(f) There is no legal provision establishing the maximum duration of pre-trial detention;

(g) The system of supervision of places of detention is not effective, responsibility for prison administration lies with the Ministry of Territorial Administration. The prison supervisory commissions have been unable to meet regularly and, according to some reports, public prosecutors and the National Committee on Human Rights and Freedoms seldom visit places of detention;

(h) The concept of a "manifestly illegal order" lacks precision and is liable to restrict the scope of application of article 2, paragraph 3, of the Convention;

(i) Appeals to the competent administrative court against deportation orders are not suspensive, and this may lead to a violation of article 3 of the Convention.

42. The Committee, while welcoming the effort made by the State party to transmit information relating to the prosecution of State officials responsible for violations of human rights, is concerned about reports of the impunity of perpetrators of acts of torture. It is particularly worried about:

(a) The fact that gendarmes can be prosecuted for offences committed in the line of duty only with the authorization of the Ministry of Defence;

(b) Reports that proceedings have actually been initiated against perpetrators of torture only in cases where the death of the victim was followed by public demonstrations;

(c) The fact that the case of the "Bépanda nine" remains unsolved;

(d) The reluctance of victims or their relatives to lodge complaints, through ignorance, distrust or fear of reprisals;

(e) Reports that evidence obtained through torture is admissible in the courts.

43. The Committee is also concerned about:

(a) The jurisdiction given to military courts to try civilians for offences against the laws on military weapons and weapons assimilated thereto;

(b) The absence of legislation banning female genital mutilation;

(c) The fact that the Criminal Code permits the exemption from punishment of a rapist if he subsequently marries the victim.

D. Recommendations

44. **The Committee urges the State party to take all necessary measures to end the practice of torture on its territory. It recommends that the State party should:**

(a) Immediately end torture in police and gendarmerie stations and prisons. It should ensure effective supervision of these places of detention, permit NGOs to visit them and give more authority to the prison supervision commissions. The National Committee on Human Rights and Freedoms and public prosecutors should pay more frequent visits to all places of detention;

(b) Immediately launch an independent investigation into the deaths at Douala central prison since the beginning of the year and bring those responsible to justice;

(c) Adopt urgent measures to reduce overcrowding in prisons. The State party should enact a law establishing the maximum duration of pre-trial detention, and consider immediately releasing offenders or suspects imprisoned for the first time for petty offences, particularly if they are under 18 years of age; such persons should not be imprisoned until the problem of prison overcrowding has been solved;

(d) Guarantee free medical care in prisons, ensure the right of prisoners to adequate food in practice, and effectively separate men and women;

(e) Immediately end the torture, ill-treatment and arbitrary detention perpetrated under the responsibility of the traditional chiefs in the north. The Committee notes the delegation's assurance that proceedings have been brought in such cases and urges the State party to step up its efforts in this direction. The peoples concerned should be duly informed of their rights and of the limits on the authority and powers of these traditional chiefs.

45. **The Committee further recommends that the State party should:**

(a) Adopt, as a matter of great urgency, and ensure the effective implementation of a law establishing the right of all persons held in police custody, during the initial hours of detention, of access to a lawyer of their choice and an independent doctor, and to inform their relatives of their detention. The Committee remarks that any extension of detention in custody ought to be approved by a judge;

(b) Abandon the notion, in its draft code of criminal procedure, of extending the period of police custody depending on the distance between the place of arrest and the place of custody, and ensure observance of the time limits on custody in practice;

(c) Ensure that detention in custody under the Act on states of emergency conforms to international human rights standards and is not prolonged beyond what the situation requires. The State party should abolish administrative and military custody as options;

(d) Systematically organize, as a matter of great urgency, the use of registers in all places of detention;

(e) Separate the police from the prison authorities, e.g. by transferring responsibility for prison administration to the Ministry of Justice;

(f) Clarify the concept of a "manifestly illegal order", so that State employees, in particular police officers, members of the armed forces, prison guards, magistrates and lawyers, are clearly aware of the implications. Specific training on this point should be offered;

(g) Allow appeals by foreigners against decisions by the administrative court to confirm deportation orders to stay execution.

46. The Committee recommends that the State should greatly increase its efforts to end the impunity of perpetrators of acts of torture, in particular by:

(a) Removing all restrictions, notably by the Ministry of Defence, on the prosecution of gendarmes and by giving the ordinary courts jurisdiction to try offences committed by gendarmes in the line of police duty;

(b) Pursuing its inquiry into the case of the "Bépanda nine". The Committee also recommends a thorough investigation of the activities of the Douala operational command while it was in operation and, by extension, the activities of all anti-gang units that are still functioning;

(c) Ensuring that its authorities immediately undertake an impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed. The Committee recommends an independent body with the authority to receive and investigate all allegations of torture and other ill-treatment at the hands of State employees;

(d) Ensuring the protection of victims and witnesses against any intimidation or ill-treatment, and by informing the public of their rights, notably with regard to complaints against State employees;

(e) Adopting, as soon as possible, and ensuring the practical enforcement of a law making evidence obtained under torture inadmissible in all proceedings.

47. The Committee further recommends that the Cameroonian authorities should:

(a) Reform the National Committee on Human Rights and Freedoms with a view to closer conformity to the Principles relating to the status of national institutions for the promotion and protection of human rights (the "Paris Principles");

(b) Restrict the jurisdiction of the military courts to military offences only;

(c) Enact a law banning female genital mutilation;

(d) Revise its legislation to end the exemption from punishment of rapists who marry their victims;

(e) Consider ratifying the Optional Protocol to the Convention against Torture.

48. The Committee recommends that the present conclusions and recommendations, together with the summary records of the meetings devoted to consideration of the third periodic report of the State party, should be widely disseminated in the country in the appropriate languages.

49. The Committee recommends the inclusion in the next periodic report of detailed information on the current minimum safeguards governing court supervision and the rights of individuals in custody, and on how they apply in practice.

50. **The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraph 45 (b) and (c), 46 (c) and (d) and 47 (a) above. It wishes in particular to be given information about any prosecutions of traditional chiefs, on what charges, and the sentences handed down. It also looks forward to a detailed account of the situation at Douala central prison.**

CHILE*

51. The Committee considered the third periodic report of Chile (CAT/C/39/Add.5 and Corr.1) at its 602nd and 605th meetings, held on 10 and 11 May 2004 (CAT/C/SR.602 and 605), and adopted the following conclusions and recommendations.

A. Introduction

52. The Committee welcomes the third periodic report of Chile, due in 1997, which was prepared in accordance with the Committee's guidelines, but regrets the lateness in submission of the report.

53. The Committee welcomes the supplementary information provided by the State party and the extensive and constructive written and oral replies to the questions posed by the Committee both prior to and during the session. The Committee also appreciates the large and highly qualified delegation of representatives that was present for the consideration of the report, and the full and in-depth discussion of the obligations under the Convention that their presence facilitated.

B. Positive aspects

54. The Committee notes the following positive developments:

(a) The introduction of the offence of torture in domestic criminal law;

(b) The comprehensive reform of the Code of Criminal Procedure, and in particular the changes aimed at improving the protection of detainees;

(c) The establishment of the Office of the Public Criminal Defender, and of the Office of the Public Prosecutor;

(d) The abolition of provision for arrest on suspicion;

(e) The reduction in the period of detention in police custody to a maximum of 24 hours;

(f) Assurances by the representatives of the State party that the Convention is directly applicable by the courts;

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* Also published as CAT/C/CR/32/5.

(g) The establishment of the National Commission on Political Imprisonment and Torture to identify persons who were deprived of freedom and tortured for political reasons during the military dictatorship, and the assurances by the representative of the State party that its tenure would be extended to permit it to complete its work;

(h) Assurances by the representatives of the State party that mechanisms have been created to ensure that any testimony obtained under torture will not be admissible in court, and their recognition of the serious problem of coercing confessions from women who seek life-saving treatment in public hospitals after illegal abortions;

(i) Confirmation that non-governmental organizations are allowed regularly to visit places of detention;

(j) The declarations under articles 21 and 22 of the Convention, enabling other States parties (art. 21) and individuals (art. 22) to submit complaints concerning the State party to the Committee;

(k) Notification by the representatives of the State party that the process of ratification of the Optional Protocol to the Convention against Torture has been initiated.

C. Factors and difficulties impeding the application of the Convention

55. The constitutional arrangements made as part of the political agreement that facilitated the transition from military dictatorship to democracy jeopardize the full exercise of certain fundamental human rights, according to the State party's report. While being aware of the political dimensions of these arrangements and their shortcomings, and noting that several Governments have previously submitted constitutional amendments to the Congress, the Committee stresses that internal political constraints cannot serve as a justification for non-compliance by the State party with its obligations under the Convention.

D. Subjects of concern

56. The Committee expresses concern about the following:

(a) Allegations of continued ill-treatment of persons, in some cases amounting to torture, by carabineros (uniformed police), policía de investigaciones (civil police forces) and the gendarmería (prison guards), and reports of failure to conduct thorough and independent investigations into such complaints;

(b) The fact that certain constitutional provisions jeopardizing the full exercise of fundamental human rights remain in force, including, in particular, the Amnesty Law, which prohibits prosecution of human rights violations committed from 11 September 1973 to 10 March 1978 and which entrenches the impunity of those responsible for torture, disappearances and other serious human rights violations during the military dictatorship and the lack of reparation for the victims of torture;

(c) That the definition of torture in the Criminal Code does not comply fully with article 1 of the Convention, and that it does not fully incorporate the purposes of torture and the acquiescence of public officials;

(d) The continued subordination of the carabineros and the civil police forces to the Ministry of Defence, one result of which is that the competence of the military jurisdiction remains excessively broad;

(e) Reports that some officials accused of torture-related crimes during the dictatorship have been appointed to high office;

(f) The absence of internal legal provisions that expressly prohibit extradition, return, or expulsion when there are grounds for believing the person may be subjected to torture in the requesting country, and the absence of internal provisions regulating the implementation of articles 5, 6, 7, and 8 of the Convention;

(g) The limited mandate of the National Commission on Political Imprisonment and Torture aimed at identifying victims of torture during the military regime and the conditions for obtaining reparation. In particular, the Committee notes with concern:

- (i) The short time period in which alleged victims can register with the National Commission, resulting in fewer persons registering than anticipated;
- (ii) The lack of clarity as to which acts the Commission defines as torture;
- (iii) The reported rejection of claims not filed in person, notwithstanding, e.g., the disability of the person(s) involved;
- (iv) The failure to permit persons to register who may have received reparation for other human rights violations (disappearance, exile, etc.);
- (v) That "austere and symbolic" reparation is not the same as "adequate and fair" reparation as set forth in article 14 of the Convention;
- (vi) That the Commission does not have the competence to investigate allegations of torture in order to identify those persons responsible, so that they may be prosecuted;

(h) Severe overcrowding and other inadequate conditions in places of detention and reports of failure to conduct systematic inspections of such places;

(i) The continued provision, in articles 334 and 335 of the Code of Military Justice, of the principle of due obedience, notwithstanding provisions affirming a subordinate's right to protest against orders that might involve committing a prohibited act;

(j) Reports that life-saving medical care for women suffering complications after illegal abortions is administered only on condition that they provide information on those performing such abortions. Such confessions are reportedly used subsequently in legal proceedings against the women and against third parties, in contravention of the provisions of the Convention;

(k) That the introduction of the new Code of Criminal Procedure in the Metropolitan Region has been delayed until late 2005;

(l) That few cases of disappearances have been clarified by the military, despite the Government's efforts to establish a dialogue;

(m) The absence of disaggregated data on complaints, the results of investigations, or prosecutions related to the provisions of the Convention;

(n) The insufficient information on the application of the Convention to action by the armed forces.

E. Recommendations

57. **The Committee recommends that the State party should:**

(a) Adopt a definition of torture in conformity with article 1 of the Convention, and ensure that it covers all forms of torture;

(b) Reform the Constitution to ensure the full protection of human rights, including the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment in conformity with the Convention, and to this end abolish the Amnesty Law;

(c) Transfer responsibility for the carabineros and the civil police forces from the Ministry of Defence to the Ministry of the Interior and ensure that the jurisdiction of military courts is limited to crimes of a military nature;

(d) Eliminate the principle of due obedience, which may permit a plea of superior orders, from the Code of Military Justice to bring it into conformity with article 2, paragraph 3, of the Convention;

(e) Adopt all the necessary measures to ensure impartial, full and prompt investigations into all allegations of torture and other cruel, inhuman or degrading treatment, the prosecution and punishment of the perpetrators, and the provision of fair and adequate compensation for the victims, in conformity with the Convention;

(f) Consider eliminating or extending the current 10-year statute of limitations for the crime of torture, taking into account its seriousness;

(g) Adopt specific legislation to prohibit extradition, return, or expulsion to countries where a person may be in danger of being subjected to torture;

(h) Clarify, through legislation, the status of the Convention in domestic law to ensure that the provisions of the Convention can be applied, or adopt specific legislation incorporating the provisions of the Convention;

(i) Develop training programmes on the provisions of the Convention for judges and prosecutors as well as other law enforcement officials, including programmes on the prohibition of torture and cruel, inhuman or degrading treatment, for military officials, police, and other law enforcement personnel and others who may be involved in the custody, interrogation or treatment of persons at risk of torture; ensure that training programmes for medical specialists specifically deal with the identification and documentation of torture;

(j) Improve conditions in places of deprivation of liberty to meet international standards and take urgent measures to address overcrowding in prisons and other places of detention; introduce a system for monitoring the conditions of detention, the treatment of inmates and prisoner-on-prisoner and sexual violence in prisons;

(k) Extend the term and mandate of the National Commission on Political Imprisonment and Torture to enable victims of all forms of torture, including victims of sexual violence, to file complaints. To this end:

- **(i) Initiate measures to better publicize the work of the Commission, utilizing all media, and clarifying the definition of torture by including a non-exhaustive list specifying various forms of torture, including sexual violence, on the forms victims must complete;**
- **(ii) Ensure that victims will be afforded privacy when registering with the Commission, and that persons in rural areas or otherwise unable to file in person can register;**
- **(iii) Include in the final report of the Commission data disaggregated by gender, age, type of torture, etc.;**
- **(iv) Consider extending the Commission's mandate to permit investigations and, where warranted, the initiation of criminal proceedings against those allegedly responsible for the actions reported;**

(l) Create a system to provide adequate and fair reparation to victims of torture, including rehabilitative measures and compensation;

(m) Eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion; investigate and review convictions where statements obtained by coercion in such cases have been admitted into evidence, and take remedial measures including nullifying convictions which are not in conformity with the Convention. In accordance with World Health Organization guidelines, the State party should ensure immediate and unconditional treatment of persons seeking emergency medical care;

(n) Ensure that the application of the new Code of Criminal Procedure is promptly extended to the Metropolitan Region so that it can be fully operational throughout the country;

(o) Introduce, as part of the reform of the criminal justice system, safeguards to protect persons experiencing possible retraumatization in connection with prosecution of cases such as child abuse, sexual abuse, etc.;

(p) Provide updated information to the Committee on the status of investigations into past crimes involving torture, including the cases known as the "Caravan of Death", "Operación Cóndor" and "Colonia Dignidad";

(q) Provide detailed statistical data, disaggregated by age, gender and geographical location, on complaints related to torture and ill-treatment, allegedly committed by law enforcement officials, as well as the related investigations, prosecutions, and sentences.

58. **The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraph 57, subparagraphs (k), (m) and (q) above.**

59. **Considering that Chile has provided information concerning the implementation of the Convention during the period covered by the third and fourth periodic reports, the Committee recommends that the State party submit its fifth periodic report by 29 October 2005.**

COLOMBIA*

60. The Committee considered the third periodic report of Colombia (CAT/C/39/Add.4) at its 575th and 578th meetings, held on 11 and 12 November 2003 (CAT/C/SR.575 and 578), and adopted the following conclusions and recommendations.

A. Introduction

61. The Committee welcomes the third periodic report of Colombia, but regrets that it was submitted on 17 January 2002, five years late. It notes that the report contains little information on the practical application of the Convention over the reporting period. The Committee is, however, grateful for the exhaustive oral replies that the State party's delegation gave to most of its members' questions and for the statistics provided during the consideration of the report.

B. Positive aspects

62. The Committee notes with satisfaction the State party's adoption of a number of domestic laws of relevance to the prevention and suppression of torture and ill-treatment, in particular:

(a) The new Penal Code (Act No. 599/2000), which defines the offences of torture, genocide, forced disappearance and forced displacement and states that due obedience will not be considered as justifying those offences;

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* Also published as CAT/C/CR/31/1.

(b) The new Military Penal Code (Act No. 522/1999), which excludes the offences of torture, genocide and forced disappearance from the jurisdiction of the military criminal courts and regulates the principle of due obedience;

(c) Act No. 548/1999, which prohibits the conscription of persons under 18 years of age;

(d) The new Code of Penal Procedure (Act No. 600/2000), title VI whereof provides that illegally obtained evidence will be inadmissible.

63. The Committee also welcomes:

(a) Act No. 742/2000 approving the ratification of the Rome Statute of the International Criminal Court, the instrument whereof was deposited on 5 August 2002;

(b) Act No. 707/2001 approving the ratification of the Inter-American Convention on Forced Disappearance of Persons.

64. Similarly, the Committee expresses its satisfaction at:

(a) The statement by the State party's representative that there neither has been nor will be any amnesty or clemency in the State party for acts of torture;

(b) The positive role of the Constitutional Court in the defence of the rule of law in the State party;

(c) The ongoing cooperation between the office in Colombia of the United Nations High Commissioner for Human Rights and the Government of Colombia.

C. Factors and difficulties impeding the application of the Convention

65. The Committee is aware of the difficulties with respect to human rights and international humanitarian law arising from the current complex situation in the country, especially in a context characterized by the activities of illegal armed groups. The Committee nonetheless reiterates that, as stated in article 2 of the Convention, no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Subjects of concern

66. The Committee reiterates its concern at the numerous acts of torture and ill-treatment reported widely and systematically committed by the State security forces and organs in the State party both during and outside armed operations. It also expresses its concern at the high number of forced disappearances and arbitrary executions.

67. The Committee expresses its concern that measures adopted or being adopted by the State party against terrorism and illegal armed groups could encourage the practice of torture. In this regard the Committee expresses its concern, in particular, at:

(a) The recruitment of part-time "peasant soldiers", who continue to live in their communities but participate in armed action against guerrillas, so that they and their communities may be the target of action by the illegal armed groups, including acts of torture and ill-treatment;

(b) Constitutional reform bill No. 223/2003, which, if adopted, would seem to confer judicial powers on the armed forces and enable persons to be detained and questioned for up to 36 hours without being brought before a judge.

68. The Committee also expresses its concern at:

(a) The climate of impunity that surrounds human rights violations by State security forces and organs and, in particular, the absence of prompt, impartial and thorough investigation of the numerous acts of torture or other cruel, inhuman or degrading treatment or punishment and the absence of redress and adequate compensation for the victims;

(b) The allegations of tolerance, support or acquiescence by the State party's agents concerning the activities of the paramilitary groups known as "self-defence groups", which are responsible for a great deal of torture or ill-treatment;

(c) The judicial reform bill, should it be approved, would reportedly provide for constitutional limitation of *amparo* proceedings and reduce the powers of the Constitutional Court, particularly with respect to the review of declarations of states of emergency. Similarly, the Committee expresses its concern at the "alternative penalties" bill, which, if approved, would, even if they had committed torture or other serious breaches of international humanitarian law, grant conditional suspension of their sentences to members of armed groups who voluntarily laid down their arms;

(d) The allegations and information indicating:

(i) That some prosecutors in the Human Rights Unit of the Public Prosecutor's Office have been forced to resign and that members of the Unit have been threatened in connection with their investigation of cases of human rights violations;

(ii) Inadequate protection against rape and other forms of sexual violence, which are allegedly frequently used as forms of torture or ill-treatment. The Committee further expresses its concern at the fact that the new Military Penal Code does not expressly exclude sexual offences from the jurisdiction of the military courts;

(iii) The fact that the military courts are allegedly still, despite the promulgation of the new Military Penal Code and the Constitutional Court's decision of 1997 that crimes against humanity did not fall within the jurisdiction of the military courts, investigating offences that are totally excluded from their competence, such as torture, genocide and forced disappearance in which members of the police or armed forces are suspected of having been involved;

(iv) The widespread, serious attacks on human rights defenders, who are playing an essential role in reporting torture and ill-treatment; in addition, the repeated attacks on members of the judiciary, threatening their independence and physical integrity;

(e) The numerous forced internal displacements of population groups as a result of the armed conflict and insecurity in the areas in which they live, taking into account the continuing absence in those areas of State structures that observe and ensure compliance with the law;

(f) The overcrowding and poor conditions in penal establishments, which could be considered inhuman or degrading treatment;

(g) The absence of information on the application of article 11 of the Convention as regards the State party's arrangements for the custody and treatment of persons subjected to arrest, detention or imprisonment, and the reports received by the Committee to the effect that the State party is failing to discharge its obligations in this respect;

(h) The lack of satisfactory information concerning the rules in the State party's law for ensuring the application of article 3 of the Convention to cases of refoulement or expulsion of aliens in danger of being tortured in the country of destination.

E. Recommendations

69. **The Committee recommends that the State party take all necessary measures to prevent the acts of torture and ill-treatment that are being committed in its territory, and in particular that it:**

(a) Take firm steps to end impunity for persons thought to be responsible for acts of torture or ill-treatment; carry out prompt, impartial and thorough investigations; bring the perpetrators of torture and inhuman treatment to justice; and provide adequate compensation for the victims. It recommends in particular that the State party reconsider in the light of its obligations under the Convention the adoption of the "alternative penalties" bill;

(b) Reconsider also, in the light of its obligation to prevent torture and ill-treatment under the Convention:

(i) The use of "peasant soldiers";

(ii) The adoption of measures that appear to give military forces powers of criminal investigation under which suspects can be detained for long periods without judicial control;

(iii) The judicial reform bill, so as to provide full protection for *amparo* proceedings and respect and promote the role of the Constitutional Court in defending the rule of law;

(c) Ensure that anyone, especially any public servant, who backs, plans, foments, finances or in any way participates in operations by paramilitary groups, known as "self-defence groups", responsible for torture is identified, arrested, suspended from duty and brought to justice;

(d) Ensure that the staff of the Human Rights Unit of the Public Prosecutor's Office are able to carry out their duties independently, impartially and in safety and provide the Unit with the resources needed to do its work effectively;

(e) Investigate, prosecute and punish those responsible for rape and other forms of sexual violence, including rape and sexual violence that occur in the framework of operations against illegal armed groups;

(f) That in cases of violation of the right to life any signs of torture, especially sexual violence, that the victim may show be documented. That evidence should be included in forensic reports so that the investigation may cover not only the homicide but also the torture. The Committee also recommends that the State party provide medical staff with the training necessary to determine when torture or ill-treatment of any kind has occurred;

(g) Respect the provisions of the Military Penal Code that exclude cases of torture from the jurisdiction of the military courts and ensure that those provisions are respected in practice;

(h) Take effective measures to protect human rights defenders against harassment, threats and other attacks and report on any judicial decisions and any other measures taken in that regard. The Committee also recommends the adoption of effective measures for the protection of the physical integrity and independence of members of the judiciary;

(i) Take effective measures to improve conditions in places of detention and to reduce overcrowding there;

(j) Ensure, so as to preclude all instances of torture or cruel, inhuman or degrading punishment, that persons subjected to any form of arrest, detention or imprisonment are treated according to international standards;

(k) Report in its next periodic report on the domestic legal provisions that guarantee non-refoulement to another State when there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture;

(l) Make the declarations referred to in articles 21 and 22 of the Convention and ratify the Optional Protocol to the Convention;

(m) Ensure the wide distribution in its territory of the Committee's conclusions and recommendations;

(n) Provide to the Committee, within one year, information on its response to the Committee's recommendations contained in subparagraphs (b), (d), (f) and (h) above.

CROATIA*

70. The Committee considered the third periodic report of Croatia (CAT/C/54/Add.3) at its 598th and 601st meetings (CAT/C/SR.598 and 601), held on 6 and 7 May 2004, and adopted the following conclusions and recommendations.

A. Introduction

71. The Committee welcomes the third periodic report of Croatia, while noting that the report was not prepared in complete conformity with the Committee's guidelines for the preparation of periodic reports. The Committee nevertheless expresses its appreciation for the oral information provided by the State party's delegation and the constructive dialogue which took place during the consideration of the report.

B. Positive aspects

72. The Committee notes with satisfaction the ongoing efforts by the State party to reform its legislation in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, namely:

(a) The adoption of the Law on Asylum in June 2003, which is scheduled to enter into force in July 2004 and which sets out the procedure for applying for asylum in the State party;

(b) The entry into force in February 2004 of the new Law on Foreigners which includes a provision prohibiting the deportation of individuals who could face torture if returned to their own country;

(c) The entry into force in January 2001 of the Law on the Police Force, which regulates the use of coercive measures, including the use of firearms;

(d) The entry into force in 2001 of the Law on the Execution of Penalties of Imprisonment which regulates the treatment and the rights of inmates.

73. The Committee welcomes:

(a) The signing of the Optional Protocol to the Convention against Torture in September 2003 and the assurances given by the State party's representative that ratification is envisaged;

(b) The ratification of the Rome Statute of the International Criminal Court in May 2001.

74. The Committee takes note with satisfaction of the assurances given by the State party's representative that the 1996 Amnesty Act has not been applied to acts of torture.

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* Also published as CAT/C/CR/32/3.

75. The Committee also takes note with satisfaction of the assurances given by the State party's representative that each prison inmate is given a minimum of 4 m^2 of living space.

76. The Committee expresses its satisfaction at the fact that the State party has extended a standing invitation to the special procedures of the Commission on Human Rights to visit the country.

C. Subjects of concern

77. The Committee is concerned about the following:

(a) In connection with torture and ill-treatment which reportedly occurred during the 1991-1995 armed conflict in the former Yugoslavia:

(i) The reported failure of the State party to carry out prompt, impartial and full investigations, to prosecute the perpetrators and to provide fair and adequate compensation to the victims;

(ii) Allegations that double standards were applied at all stages of the proceedings against Serb defendants and in favour of Croat defendants in war crime trials;

(iii) The reported harassment, intimidation and threats faced by witnesses and victims testifying in proceedings and the lack of adequate protection from the State party;

(b) The fact that, to date, there have been no prosecutions or convictions for alleged crimes pursuant to article 176 of the Penal Code, which criminalizes acts of torture and other cruel, inhuman or degrading treatment or punishment;

(c) The reported lack of prompt and adequate access by persons deprived of their liberty to legal and medical assistance and to contact with family members;

(d) In connection with asylum-seekers and illegal immigrants:

(i) The poor conditions of detention of those held in the Jezevo Reception Centre for Foreigners, including poor hygienic conditions and limited access to recreational activities;

(ii) The alleged cases of violence against those held in the Jezevo Reception Centre for Foreigners and the lack of prompt and impartial investigations into this matter;

(iii) The deprivation of their liberty for prolonged periods of time;

(e) The alleged failure of the State party to address the issue of violence and bullying between children and young adults placed in social care institutions;

(f) The alleged failure of the State party to prevent and fully and promptly investigate violent attacks by non-State actors against members of ethnic and other minorities;

(g) The poor regime for remand prisoners, who spend up to 22 hours a day in their cells without meaningful activities.

D. Recommendations

78. **The Committee recommends that the State party:**

(a) Take effective measures to ensure impartial, full and prompt investigations into all allegations of torture and other cruel, inhuman or degrading treatment, the prosecution and punishment of the perpetrators as appropriate and irrespective of their ethnic origin, and the provision of fair and adequate compensation for the victims;

(b) Ensure full cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY), inter alia by ensuring that all indicted persons in their territory are arrested and transferred to the custody of the Tribunal;

(c) Enforce all relevant legislation providing for the protection of witnesses and other participants in proceedings and ensure that sufficient funding is allocated for effective and comprehensive witness protection programmes;

(d) Make judges, prosecutors and lawyers fully aware of Croatia's international obligations in the field of human rights, particularly those enshrined in the Convention;

(e) Take measures to ensure in practice the right of all persons deprived of their liberty to have prompt access to counsel and a doctor of their choice, as well as to contact family members;

(f) Adopt all necessary measures to improve the material conditions of the reception centres for asylum-seekers and immigrants and ensure the physical and psychological integrity of all individuals accommodated in these centres;

(g) Refrain from detaining asylum-seekers and illegal immigrants for prolonged periods;

(h) Discontinue the practice of refusing access to asylum procedures because the authorities are unable to verify the identity of asylum-seekers owing to a lack of documentation or interpreters;

(i) Provide an information sheet in the appropriate languages to inform asylum-seekers of the asylum procedures immediately after they are apprehended or arrive in the territory of the State party;

(j) Allow the Office of the United Nations High Commissioner for Refugees (UNHCR) full access to asylum-seekers, and vice versa. UNHCR should normally be given access to individual files so that it can monitor asylum procedures and ensure that the rights of refugees and asylum-seekers are respected;

(k) Increase the protection of children and young adults placed in social care institutions, inter alia by ensuring that violent acts are reported and investigated, providing support and treatment for children and young adults with psychological problems, and ensuring that these institutions employ trained personnel, such as social workers, psychologists and pedagogues;

(l) Ensure the protection of members of ethnic and other minorities, inter alia by undertaking all effective measures to prosecute and punish all violent acts against these individuals, establishing programmes to raise awareness, prevent and combat this form of violence, and including this issue in the training of law enforcement officials and other relevant professional groups;

(m) Improve the regime of activities for remand prisoners in accordance with international standards;

(n) Provide information to the Committee on legal and other measures undertaken to ensure the systematic review of interrogation rules, instructions, methods and practices for persons deprived of their liberty;

(o) Continue with its efforts to strengthen human rights education and training activities on the prohibition of torture and ill-treatment for law enforcement officials, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;

(p) Provide to the Committee statistical data regarding cases of torture and other forms of cruel, inhuman or degrading treatment or punishment reported to administrative authorities and the result of the investigations, disaggregated by, inter alia, gender, ethnic group, geographical region, and type and location of place of deprivation of liberty, where it occurred. In addition, information should be provided regarding complaints and cases filed with domestic courts, including the results of investigations and the consequences for the victim in terms of redress and compensation.

79. **The Committee also recommends that the State party ensure the wide distribution in its territory of the Committee's conclusions and recommendations.**

80. **The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraph 78 (a), (b), (f), (n) and (p) above.**

81. **The Committee recommends that the State party submit its next periodic report on 7 October 2008, the due date of the fifth periodic report. This report will combine the fourth and fifth periodic reports.**

CZECH REPUBLIC*

82. The Committee considered the third periodic report of the Czech Republic (CAT/C/60/Add.1) at its 594th and 597th meetings, held on 4 and 5 May 2004 (CAT/C/SR.594 and 597), and adopted the following conclusions and recommendations.

A. Introduction

83. The Committee welcomes the submission of the third periodic report of the Czech Republic submitted in conformity with the guidelines of the Committee, and the inclusion of self-critical information therein, as well as the frank and open dialogue with the State party.

84. While noting that the report covers the period from 1 January 1998 to 31 December 2001, the Committee appreciates the update provided by the delegation of the Czech Republic and the detailed replies to the list of issues and to the questions raised by the Committee members during the dialogue.

B. Positive aspects

85. The Committee welcomes the ongoing efforts by the State party to revise its legislation in order to safeguard human rights in general and, more specifically, those related to the implementation of the Convention against Torture. The Committee welcomes in particular:

(a) The amendments to the Residence of Aliens Act No. 222/2003 Coll., effective 1 January 2004 establishing an independent judicial second instance body to review asylum cases;

(b) The amendment to the Act on Serving Prison Terms (Act No. 52/2004 Coll.), and certain related acts, which define conditions in prison in accordance with the standards required and offer greater protection to detainees;

(c) The Law on Probation and Mediation and the creation of a Probation and Mediation Service (Act No. 257/2000 Coll.), resulting, inter alia, in the decrease in the number of prisoners;

(d) The Law on the Special Protection of Witnesses (Act. No. 137/2001 Coll.);

(e) Amendments to the Penal Code (No. 265/2001 Coll.) providing for the direction of investigation of criminal offences allegedly committed by members of the police to the State Prosecuting Attorney instead of the police investigator, as was previously the case;

(f) The introduction in 2003 of the National Strategy on Combating Trafficking in human beings;

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* Also published as CAT/C/CR/32/2.

(g) The intention to ratify the Optional Protocol to the Convention in 2005 and the related Amendment to the Act of the Ombudsman, approved by the Government's Legislative Council, broadening its powers to act as the National Preventive Mechanism, as envisaged by the Optional Protocol to the Convention;

(h) The publication of the reports of the European Committee for the Prevention of Torture and responses by the State party as well as assurances that measures will be taken to follow up on the recommendations.

C. Subjects of concern

86. The Committee expresses concern about the following:

(a) The persistent occurrence of acts of violence against the Roma and the alleged reluctance on the part of the police to provide adequate protection and to investigate such crimes, despite efforts made by the State party to counter such acts;

(b) The lack of explicit legal guarantees of the rights of all persons deprived of liberty to have access to a lawyer, and to notify their next of kin from the very outset of their custody;

(c) The fact that minors are not kept separately from adults in all situations of detention;

(d) The fact that remand prisoners and those serving life sentences cannot work and are left idle without adequate activities;

(e) The occurrence of inter-prisoner violence and the lack of statistical data that may provide a breakdown by relevant indicators to facilitate determination of the root causes and the design of strategies to prevent and reduce such occurrences;

(f) Medical consultations may not always be confidential and the decision to resort to restraints is not always covered by the law or regularly reviewed;

(g) The current system under which inmates are required to cover a portion of the expenses related to their imprisonment;

(h) The findings of the investigations into the excessive use of force by the police following the demonstrations in Prague during the September 2000 International Monetary Fund/World Bank Meeting, according to which only one case qualified as a criminal offence;

(i) The lack of complete information from the State party on redress and compensation provided to victims of acts of torture, or to their families;

(j) The amendments to the law on the right to asylum which amplified the grounds for rejecting asylum requests and allows for the detention of persons in the process of being removed to be held in aliens' detention centres for a period of up to 180 days; as well as the restrictive nature of the conditions in these centres which are comparable to those in prisons;

(k) Allegations regarding some incidents of uninformed and involuntary sterilizations of Roma women, as well as the Government's inability to investigate due to insufficient identification of the individual complainants.

D. Recommendations

87. **The Committee recommends that the State party:**

(a) **Exert additional efforts to combat racial intolerance and xenophobia and ensure that the comprehensive anti-discrimination legislation being discussed include all relevant grounds covered by the Convention;**

(b) **Take measures to establish an effective, reliable and independent complaint system to undertake prompt and impartial investigations into all allegations of ill-treatment or torture by the police or other public officials, including allegations of racially motivated violence by non-State actors, in particular any that have resulted in deaths, and to punish the offenders;**

(c) **Strengthen existing efforts to reduce occurrences of ill-treatment by the police and other public officials, including those which are ethnically motivated, and, while ensuring protection of an individual's privacy, devise modalities of collecting data and monitoring the occurrence of such acts in order to address the issue more effectively;**

(d) **Strengthen safeguards provided in the Code of Criminal Procedure against ill-treatment and torture, and ensure that, in law as well as in practice, all persons deprived of their liberty be guaranteed, and systematically informed of, their right to a lawyer and to notify their next of kin;**

(e) **Ensure that persons under 18 years of age are detained separately from adults in all circumstances;**

(f) **Consider modalities of creating additional activities for all detainees with a view to encouraging them to occupy themselves, thus reducing the amount of time spent in idleness;**

(g) **Monitor and document incidents of inter-prisoner violence with a view to revealing the root causes and designing appropriate prevention strategies. The Committee invites the State party to provide it with such data, disaggregated by the relevant factors, in its next periodic report;**

(h) **Ensure that medical examinations are confidential and consider possibilities of transferring the medical services from the Ministry of Justice to the Ministry of Health;**

(i) **Reconsider the arrangements whereby prisoners are required to cover a portion of their expenses, with a view to abolishing this requirement completely;**

(j) **Ensure that the classification of acts prohibited under the Convention is made by an impartial authority with a view to initiating appropriate proceedings and provide in its next periodic report information on criminal investigations into suspected acts of torture or other ill-treatment pursuant to article 259 (a) of the Penal Code;**

(k) Review the independence and effectiveness of the investigations into complaints of excessive use of force in connection with the International Monetary Fund/World Bank Meeting demonstrations of September 2000, with a view to bringing those responsible to justice and providing compensation to the victims;

(l) Include in its next periodic report information on compensation provided for victims or their families in accordance with article 14 of the Convention;

(m) Review the strict regime of detention for illegal immigrants with a view to its repeal and ensure that all children held in these detention centres are removed with their parents to family reception centres;

(n) Investigate claims of involuntary sterilizations, using medical and personnel records, and urge the complainants, to the extent possible, to assist in substantiating the allegations;

(o) Provide, within one year, information on its responses to the Committee's recommendations contained in subparagraphs (a), (b), (i), (k) and (m) above.

(p) Widely disseminate the reports submitted by the Czech Republic to the Committee and the conclusions and recommendations thereon, in appropriate languages through official web sites, the media and non-governmental organizations;

(q) Submit its next periodic report by 31 December 2009, the date on which the fifth periodic report is due. This report should combine the fourth and fifth periodic reports.

GERMANY*

88. The Committee examined the third periodic report of Germany (CAT/C/49/Add.4) at its 600th and 603rd meetings (CAT/C/SR.600 and 603), held on 7 and 10 May 2004, and adopted the following conclusions and recommendations.

A. Introduction

89. The Committee welcomes the third periodic report of Germany, although it regrets the three-year delay in its submission. The report complies with the Committee's reporting guidelines; in particular, it addresses the State party's response to the Committee's previous concluding observations. The Committee commends the comprehensive written responses provided to the list of issues, as well as the meticulous responses provided to all oral questions posed. Finally, the Committee also welcomes the State party's willingness to engage in a full and frank dialogue with the Committee on all issues arising under the Convention.

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* Also published as CAT/C/CR/32/7.

B. Positive aspects

90. The Committee welcomes:

(a) The State party's strengthening of institutional protections for human rights, including through the establishment of the Human Rights Committee of the Federal Parliament and the Federal Government's submission of biennial national human rights reports to the Federal Parliament;

(b) The establishment in March 2001 of the German Institute for Human Rights, a focal point of whose competence is monitoring of the domestic human rights situation;

(c) The State party's reaffirmation of its commitment to the absolute character of the ban on exposure to torture, including through refoulement. In this respect, the Committee takes note of the recent institution of criminal proceedings against a senior Frankfurt police officer on charges of threatened use of torture. In addition, it welcomes the State party's confirmation that the ban on refoulement contained in article 3 of the Convention is applicable to all cases, including where the asylum-seeker has been denied refugee status on security grounds;

(d) The State party's commitment to external scrutiny of its record under the Convention, expressed by its acceptance of the Committee's competence to hear complaints under articles 21 and 22 of the Convention;

(e) The significant improvements that have been made over the reporting period (i) to the Frankfurt airport refugee facilities; (ii) to the applicable refugee determination processes conducted there; and (iii) to the methods exercised in forcibly returning failed asylum-seekers by air;

(f) The State party's passage of legislation to implement the Rome Statute of the International Criminal Court, which comprehensively codifies crimes against international law, including torture in the context of genocide, war crimes or crimes against humanity;

(g) The consideration by the State party of issues of torture and other conduct contrary to the Convention that is committed by non-State actors, when relevant under the Convention, in asylum and removal proceedings, and the fact that according to federal jurisprudence individual claims of mistreatment may also be made where a person originates from a "safe" third country;

(h) The State party's initiative to establish the mandate of a Special Rapporteur of the United Nations Commission on Human Rights on trafficking in persons, especially in women and children.

C. Subjects of concern

91. The Committee expresses its concern at:

(a) The length of time taken to resolve criminal proceedings arising from allegations of ill-treatment of persons in the custody of law enforcement authorities, including in particular serious cases where death has resulted, such as that of Amir Ageeb, who died in May 1999;

(b) Some allegations that criminal charges have been brought, for punitive or dissuasive purposes, by law enforcement authorities against persons who have brought charges of ill-treatment against law enforcement authorities;

(c) The fact that for numerous areas covered by the Convention, the State party was unable to supply statistics, or appropriately disaggregate those in its possession. During the current dialogue, this occurred with respect to, for example, public prosecutions, alleged cases of collusive allegations of ill-treatment, cases of counter-charges being brought by law enforcement authorities, and details as to offenders, victims and the factual elements of ill-treatment charges;

(d) The fact that, owing to perceived constitutional difficulties arising from the division of powers between federal and Länder authorities, measures taken at the federal level to enhance compliance with the Convention are not applicable to relevant activities of the Länder. Thus, the comprehensive federal rules regarding forcible return by air, while applicable to returns carried out by the Federal Border Police (*Bundesgrenzschutz*), are not applicable to returns carried out by Länder authorities;

(e) The legal controls and training provided to private security companies utilized to provide security to certain detention facilities at Frankfurt-am-Main international airport.

D. Recommendations

92. **The Committee recommends that:**

(a) **The State party take all appropriate measures to ensure that criminal complaints lodged against its law enforcement authorities are resolved expeditiously, in order to resolve such allegations promptly and avoid any possible inference of impunity, including in cases where counter-charges are alleged;**

(b) **The State party create a central point to assemble relevant nationwide statistical data and information on areas covered by the Convention, request such data and information from the Länder authorities or undertake such other measures as may be necessary to ensure that the State party's authorities, as well as the Committee, are fully apprised of these details when assessing the State party's compliance with its obligations under the Convention;**

(c) **The State party take such measures as are appropriately within its power with respect to the authorities of the Länder to ensure the adoption and general application of measures which have proven efficacious at the federal level in improving compliance with the Convention, such as the federal rules on forcible return by air;**

(d) **The State party comprehensively group together its criminal provisions relating to torture and other cruel, inhuman or degrading treatment or punishment;**

(e) **The State party provide the Committee with details on how many cases of extradition or removal subject to receipt of diplomatic assurances or guarantees have occurred since 11 September 2001, what the State party's minimum requirements are for the content of such assurances or guarantees and what measures of subsequent monitoring it has undertaken in such cases;**

(f) The State party clarify for the Committee (i) whether all complaint facilities and avenues of legal redress (including State assumption of responsibility for the acts of its agents) that are available against members of the law enforcement authorities are applicable to the employees of private security companies engaged by the State party; and (ii) what kind of training is provided to such employees on issues arising under the Convention;

(g) The State party offer, as a routine practice, medical examinations both before all forced removals by air and, in the event that they fail, thereafter;

(h) The State party consider making more active use of the Convention's extradition mechanisms with respect to German nationals who are alleged to have engaged, or to be complicit, in acts of torture abroad or in which German nationals are alleged to be victims;

(i) The State party make all efforts to ratify the Optional Protocol to the Convention.

93. **The Committee requests that the State party provide, within one year, information in response to the Committee's recommendations in paragraph 92 (a), (b), (e) and (f) above.**

94. **The Committee, considering that Germany has provided information concerning the implementation of the Convention during the period covered by the third and fourth periodic reports, recommends that the State party submit its fifth periodic report on 30 October 2007.**

LATVIA*

95. The Committee considered the initial report of Latvia (CAT/C/21/Add.4) at its 579th and 582nd meetings, held on 13 and 14 November 2003 (CAT/C/SR.579 and 582), and adopted the following conclusions and recommendations.

A. Introduction

96. The Committee welcomes the initial report of Latvia, which was prepared in accordance with the form and contents of initial reports of States parties. It regrets, however, that the report, due on 13 May 1993, was submitted with a nine-year delay. The Committee acknowledges in this regard the difficulties encountered by the State party during its political and economic transition and hopes that in the future it will comply fully with its obligations under article 19 of the Convention.

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* Also published as CAT/C/CR/31/3.

97. The Committee also welcomes the additional information provided in writing by the State party and that by the high-level delegation in the introductory remarks and in the detailed answers to the questions raised, which demonstrate the State party's willingness to establish an open and fruitful dialogue with the Committee.

B. Positive aspects

98. The Committee notes with appreciation the ongoing efforts by the State party aimed at strengthening human rights in Latvia. In particular, the Committee welcomes the following:

(a) Legislative measures:

(i) The establishment of the Constitutional Court in 1996 and the inclusion in the Constitution of chapter VIII devoted to fundamental human rights;

(ii) The establishment of the National Human Rights Office in 1995, which has the mandate, inter alia, to review complaints of human rights violations, as well as to submit to the Constitutional Court cases of legal provisions it believes are at variance with the Constitution of Latvia;

(iii) The entry into force of the new Asylum Law in September 2002, aimed at bringing the national asylum system further into alignment with the European Union *acquis* on asylum and related international standards. The new Asylum Law also introduced two forms of complementary protection ("alternative status") for asylum-seekers;

(iv) The entry into force of the new Immigration Law in May 2003 which, inter alia, provides a maximum length of detention for foreigners arrested in violation of the Law and the right of an arrested foreigner to submit a complaint to a prosecutor, to contact the consulate and to have access to legal aid;

(v) The entry into force of the new Criminal Law, which introduced the concept of progressive execution of sanctions and established alternative sanctions, with a view to reducing the problem of overcrowding in prisons;

(vi) The draft new Criminal Procedure Law that aims at simplifying the legal proceedings and would, inter alia, decrease the time for bringing a suspect before a judge from 72 to 48 hours;

(vii) The draft new Amnesty Law, providing either for the release or the reduction of the term of imprisonment of those groups at risk, such as minors, pregnant women, women with infant children, disabled persons and the elderly;

(b) Administrative measures:

  - (i) The adoption in 2002 of the Regulation on the Internal Rules of the Remand Prisons, setting standards for conditions of detention and basic rights and obligations of detainees;
  - (ii) The transfer, as of November 2003, of all Latvian prisons under the surveillance of trained professional guards;
  - (iii) The setting up of training programmes, in accordance with article 10 of the Convention, for law enforcement and judicial personnel.

99. Furthermore, the Committee would like to commend:

(a) The involvement of national NGOs and civil society in the preparation of the initial report of Latvia;

(b) The launching of a new project involving NGOs in monitoring places of deprivation of liberty in Latvia.

C. Subjects of concern

100. The Committee expresses concern about the following:

(a) Allegations of serious ill-treatment of persons which in some cases could be considered as amounting to torture, by members of the police, especially at the time of apprehension and interrogation of suspects;

(b) The lack of independence and impartiality of the Internal Security Office of the State Police, which is competent to deal with complaints on alleged violence by police officers;

(c) The conditions of detention in places of deprivation of liberty, especially police stations and short-term detention isolators;

(d) The length of legal proceedings and the excessive periods of pre-trial detention, especially in short-term detention isolators;

(e) The fact that the new Asylum Law stipulates that neither "alternative status" for asylum-seekers shall be granted to a person who has arrived in Latvia from a country in which he/she could have asked for and received protection. Furthermore, the Committee is concerned at the long periods that asylum-seekers may spend in detention after the rejection of their asylum request;

(f) The overcrowding in prisons and other places of detention, taking into account, inter alia, the potential risk of this situation for the spread of contagious diseases;

(g) The fact that although the draft new Criminal Procedure Law has addressed many of the existing shortcomings, the Criminal Procedure Law currently in force does not include the right of a detainee to contact family members. Concern is also expressed about the information that access to a doctor of choice is subject to the approval of the authorities;

(h) Allegations that in many cases, even where so provided by law, access to a lawyer is denied or delayed in practice to persons in police custody, and that defendants have to pay back the costs of legal aid if their case is lost;

(i) The number of persons who lost their legal status as citizens or "non-citizens" and became "illegal" after having temporarily left the country.

D. Recommendations

101. **The Committee recommends that the State party:**

(a) Take all appropriate measures to prevent acts of ill-treatment by members of the police and ensure that all allegations of ill-treatment are investigated promptly and impartially;

(b) Improve conditions in places of deprivation of liberty, especially police stations and short-term detention isolators, and ensure that they conform to international standards;

(c) Guarantee that detainees in police custody have the right to contact their families and have access to a medical doctor of their choice and to legal counsel from the outset of their deprivation of liberty;

(d) Take all appropriate steps to shorten the length of legal proceedings and the current pre-trial detention period;

(e) Introduce legally enforceable time limits for the detention of rejected asylum-seekers who are under expulsion orders. In this respect, the State party is invited to provide statistics, disaggregated by gender, ethnicity, country of origin and age, relating to persons awaiting expulsion;

(f) Continue to take measures to address overcrowding in prisons and other places of detention;

(g) Provide in the next periodic report detailed statistical data, disaggregated by age, gender and country of origin, on complaints related to torture and other ill-treatment allegedly committed by members of the police forces, as well as related investigations, prosecutions, and penal and disciplinary sentences;

(h) Ensure that the draft code of conduct for police interrogation ("Police Ethics Code") is speedily adopted;

(i) Take measures to ensure that in all circumstances the crime of torture is explicitly included among the crimes for which article 34 of the Criminal Law excludes the defence of superior orders;

(j) Continue to facilitate the integration and naturalization of "non-citizens";

(k) Consider making the declarations under articles 21 and 22 of the Convention;

(l) Consider ratifying the Optional Protocol to the Convention.

102. **The Committee also recommends that the State party disseminate widely the Committee's conclusions and recommendations, in all appropriate languages, through official web sites, the media and non-governmental organizations.**

103. **The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraph 101 (e), (f), (g), (h) and (i) above.**

104. **The State party is invited to submit its next periodic report, which will be considered as the second, by 13 May 2005.**

LITHUANIA*

105. The Committee considered the initial report of Lithuania (CAT/C/37/Add.5) at its 584th and 587th meetings, held on 17 and 19 November 2003 (CAT/C/SR.584 and 587), and adopted the following conclusions and recommendations.

A. Introduction

106. The Committee welcomes the initial report of Lithuania and the additional information provided by the high-level delegation.

107. The report, which mainly addresses legal provisions and lacks detailed information on the practical implementation of the Convention and statistical data, does not fully conform to the reporting guidelines.

B. Positive aspects

108. The Committee welcomes the ongoing efforts by the State party to reform its legal system and revise its legislation in order to safeguard fundamental human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, including:

(a) The adoption of a new Criminal Code and Code of Criminal Procedure which prohibit the use of violence, intimidation, degrading treatment or treatment impairing a person's health, and a Code of Enforcement of Punishments, all of which entered into force on 1 May 2003;

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* Also published as CAT/C/CR/31/5.

(b) The promulgation of Order 96 (8 June 2001) of the Prosecutor General on Control in Ensuring Protection of the Detained and Arrested Persons Against Torture and Inhuman or Degrading Treatment or Punishment;

(c) The adoption of the Law on Compensation of Damage Resulting from Unlawful Actions of Institutions of Public Authority on 21 May 2002;

(d) The Law on the Establishment of Administrative Tribunals (1999) providing for the examination of complaints concerning acts, actions or omissions of public officials;

(e) The transfer of responsibility for enforcement of criminal punishments from the Ministry of the Interior to the Ministry of Justice by Law No. VIII-1631 of 18 April 2000;

(f) The ratification of several human rights treaties, notably the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and ongoing cooperation with the Committee for the Prevention of Torture;

(g) The ratification of the Rome Statute of the International Criminal Court in 2003;

(h) The development of a National Human Rights Action Plan approved by resolution of the Parliament of Lithuania No. IX-1185 of 7 November 2002;

(i) The development of institutional structures for human rights, in particular the Parliamentary Ombudsman, the Ombudsman for Equal Opportunities of Women and Men and the Children's Rights Ombudsman;

(j) The establishment of the Witness and Victim Protection Service of the Police Department;

(k) The steps initiated to reduce overcrowding by, inter alia, introducing a crime of misdemeanour which prescribes non-custodial punishments.

C. Subjects of concern

109. The Committee expresses concern about the following:

(a) The absence of a comprehensive definition of torture as set out in article 1 of the Convention, and lack of a specific criminal offence of torture in criminal law (art. 4);

(b) The failure in practice to enable detained persons to obtain access from the outset of their detention to a lawyer, independent doctor or family members;

(c) Allegations of ill-treatment of persons in custody that may amount to torture, particularly any that may take place during police interviews;

(d) Procedures related to expulsion of foreigners which in some instances may be in breach of article 3; the conditions in the facilities where foreigners awaiting expulsion are kept and the absence of data on the age, sex and country of destination of expelled foreigners or stateless persons, specifically those at the Foreigners Registration Centre;

(e) The large increase in complaints about the treatment of prisoners by the police (largely due to the State's own positive efforts to make the complaint process more confidential) and that, according to the State party, almost half of such complaints have been upheld. The Committee is further concerned that investigations into allegations against police officers are not conducted by a body independent of the police;

(f) Reports that some State-appointed lawyers have shown little interest in how their clients who are detained are treated;

(g) The lack of information on compensation and rehabilitation provided to victims of torture and/or ill-treatment;

(h) That conditions in places of detention are poor, as acknowledged by the State party, and that some prisoners "live in fear" of inter-prisoner violence, as noted by the European Committee to Prevent Torture;

(i) The lack of information provided regarding allegations of brutality against conscripts in the army.

D. Recommendations

110. **The Committee recommends that the State party:**

(a) Adopt a definition of torture that covers all the elements contained in article 1 of the Convention and incorporate into the Penal Code a definition of a crime of torture that clearly responds to this definition;

(b) Ensure that all detained persons have immediate access to a doctor and a lawyer, as well as contact with their families at all stages of detention (art. 2);

- **(i) Take all appropriate measures to prevent acts of torture and ill-treatment by, inter alia:**
- **(ii) Ensuring that health-care personnel are trained to identify signs of physical and psychological torture;**
- **(iii) Emphasizing the importance of training prison officials to develop good communication skills between themselves and with detainees, as a measure to reduce the resort to prohibited physical coercion, and to reduce inter-prisoner violence;**
- **(iv) Taking other appropriate measures to prevent acts of ill-treatment by members of the police, and establish a fully independent and impartial investigation system;**

(d) Ensure in practice that the public prosecutor's actions are monitored to ensure that any persons who allege ill-treatment or torture or who require medical examination are permitted by the public prosecutor to receive such examinations at their request and not only at the order of an official;

(e) Take urgent and effective steps to establish a fully independent complaints mechanism, ensure prompt, impartial and full investigations into the many allegations of torture reported to the authorities and the prosecutions, and punish, as appropriate, the alleged perpetrators;

(f) Ensure that officials in the army promptly investigate reports of brutality against conscripts that may amount to ill-treatment or torture, and investigate other reports of abuse fairly and impartially, and hold those responsible to account;

(g) Ensure that the competent authorities strictly observe article 3 of the Convention and do not expel, return or extradite a person to a State where he/she might be subjected to torture. The Committee urges the State party to intensify efforts to ensure that holding facilities for foreigners meet international standards and requests disaggregated data in that respect;

(h) Continue efforts to provide an effective legal aid system by, inter alia, public financing of defence counsel offices, providing adequate remuneration, and involving the Bar Association in coordinating appointments;

(i) Provide information about the possibilities for redress and the rehabilitation available for victims of torture and other forms of cruel, inhuman and degrading treatment or punishment;

(j) Continue to take measures to improve conditions of detention for both remand and convicted persons;

(k) Consider making the declarations under articles 21 and 22 of the Convention and consider ratifying the Optional Protocol to the Convention;

(l) Consider consulting with non-governmental and civil society organizations when preparing all parts of the next periodic report.

111. The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, geographical location, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the types and results of cases of police and other law enforcement personnel accused of torture-related offences, including those rejected by the court, and on the compensation and rehabilitation provided to the victims, if any.

112. The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraph 110 (d), (e) and (f) above.

113. The Committee requests the State party to widely disseminate the Committee's conclusions and recommendations and the summary records of the review of the State party's initial report in the country, including to law enforcement officials and by means of publication in the media, and through distribution and popularization efforts by non-governmental organizations.

MONACO*

114. The Committee considered the second periodic report of Monaco (CAT/C/38/Add.2) at its 596th, 599th and 609th meetings (CAT/C/SR.596, 599 and 609), held on 5, 6 and 13 May 2004, and adopted the following conclusions and recommendations.

A. Introduction

115. The Committee welcomes with satisfaction the second periodic report of Monaco, which is broadly consistent with the Committee's general guidelines. It notes, however, that the report was submitted five years late and contains little specific information on how the Convention is being implemented. It is pleased that the State party sent a high-level delegation which provided clear answers to the questions put to it and evinced a spirit of frank cooperation.

B. Positive aspects

116. The Committee notes with satisfaction:

(a) The absence of any allegations that the State party has violated the Convention;

(b) The fact that the State party is currently becoming a member of the Council of Europe;

(c) The reform of the Criminal Code and the Code of Criminal Procedure to bring them into line with European human rights standards;

(d) The contributions made every year since 1994 to the United Nations Voluntary Fund for Victims of Torture.

C. Subjects of concern

117. The Committee expresses concern about:

(a) The lack of a definition of torture in criminal law that covers all the constituent elements contained in article 1 of the Convention;

(b) The lack of any provision expressly prohibiting the invocation of exceptional circumstances or orders from a superior officer or a public authority as a justification for torture;

(c) The weakness of the safeguards associated with the expulsion and return (refoulement) of foreigners, inasmuch as there appears to be no clause on non-refoulement in Monaco's domestic law that meets the requirements of article 3 of the Convention and appeal to the Supreme Court does not automatically have suspensive effect;

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* Also published as CAT/C/SR/32/1.

(d) The narrow scope of articles 228 and 278 of the Criminal Code, which do not fully meet the requirements of article 4 of the Convention, since they relate only to murder committed by means of acts of torture or accompanied by acts of cruelty and to torture committed in the course of unlawful arrest or abduction;

(e) The fact that persons in custody are not entitled to the assistance of counsel, there being no provision for such assistance until they first appear before the investigating magistrate, and can inform their next of kin that they have been detained only with the magistrate's authorization;

(f) The lack of explicit provisions requiring a register of individuals held in police premises, even if such registers are actually kept;

(g) The absence of any mechanism to monitor physical prison conditions and how prisoners are treated in French penitentiary establishments.

D. Recommendations

118. **The Committee recommends that the State party:**

(a) Establish in its domestic criminal law a definition of torture that is fully consistent with article 1 of the Convention;

(b) Enact in its domestic law a prohibition on the invocation of exceptional circumstances or orders received from a superior officer or public authority as a justification of torture;

(c) Respect the principle laid down in article 3 of the Convention, including in cases involving the expulsion and return (refoulement) of foreigners, and establish that appeals against deportation orders which mention the risk of torture in the country of destination automatically have suspensive effect. The Committee, noting that individuals are expelled or returned only to France, reminds the State party that it must satisfy itself that no one will be returned to a third country where there might be a risk of torture;

(d) Guarantee the right of individuals in detention to have access to a lawyer of their choosing and inform their next of kin within the first few hours of being detained;

(e) Adopt regulations requiring the use of registers in police premises in conformity with the relevant international agreements, particularly the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

(f) Monitor physical prison conditions and how prisoners are treated in French penitentiary establishments;

(g) Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, whose prevention objectives are very important.

119. **The Committee recommends that the present conclusions and recommendations, and the summary records of the meetings at which the State party's second periodic report was considered, should be widely disseminated in the country.**

120. **The Committee requests the State party to provide within one year information on the action it has taken on its recommendations contained in paragraph 118 (c), (d) and (f) above.**

121. **The Committee, considering that the second periodic report of Monaco also covers the third report due on 4 January 2001, requests the State party to submit its fourth and fifth reports in a single document on 4 January 2009.**

MOROCCO*

122. The Committee considered the third periodic report of Morocco (CAT/C/66/Add.1 and Corr.1), together with the additional oral information submitted by the State party delegation, at its 577th, 580th and 589th meetings (CAT/C/SR.577, 580 and 589), held on 12, 13, and 20 November 2003, and adopted the following conclusions and recommendations.

A. Introduction

123. The Committee welcomes the third periodic report of Morocco, which provided it with detailed information on the efforts made by the State party, since the consideration of the second report in 1999, to implement the Convention, and also the information given orally by the Moroccan delegation, which furnished positive information concerning measures to implement the Convention taken since the submission of the third report on 23 March 2003. The Committee thanks the delegation for the frank and constructive dialogue established with it.

124. The third periodic report was submitted slightly late since it had been scheduled for 2002. It was not completely consistent with the general guidelines regarding the form and contents of periodic reports, notably because it did not devote a part to measures taken to comply with the conclusions and recommendations previously addressed to the State party by the Committee.

B. Positive aspects

125. The Committee takes note of the following positive new developments:

(a) The declaration by the State party delegation of the intention of the executive, up to the highest level, and of the legislature, to implement the Convention, which is directly applicable in Morocco, to adopt institutional, normative and educational measures, in consultation with local and international associations, and to develop technical cooperation in the area of human rights with the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Human Rights and non-governmental organizations (NGOs). This political will has also been reflected in the release of political prisoners, including a group of 56 who were released in November 2002, and in the compensation of victims;

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* Also published as CAT/C/CR/31/2.

(b) The broadening of the mandate of the Consultative Council on Human Rights (CCDH); the appointment of a "mediator", the Diwan al-Madhalim, responsible for considering cases of human rights violations submitted to him and for forwarding to the competent authorities the requisite proposals and recommendations; the establishment of the Mohamed VI Foundation for the reintegration of prisoners, which is presided over by the King himself; the establishment of the Human Rights Documentation, Information and Training Centre; the prison reform, including the adoption of measures to assist persons subjected to any form of detention or imprisonment, notably juveniles in the child protection centres, and the implementation of measures to ensure medical care and training for detainees and prisoners;

(c) The substantial reform of the relevant legislation initiated by the State party, in particular the Code of Criminal Procedure and the draft reform of the Criminal Code, in consultation with CCDH and the competent human rights associations, notably with regard to the presumption of innocence, the right to a fair trial, the right of appeal and consideration of the specific needs of women and juveniles;

(d) The remarkable efforts to develop training and education in the area of human rights, notably the organization by the Human Rights Documentation, Information and Training Centre of training for prison service officials, senior prison medical personnel and forensic physicians;

(e) The unlimited access to detainees and prisoners accorded to independent local NGOs;

(f) The payment of compensation, following the recommendations made by the Independent Arbitration Commission set up within CCDH on compensation for material damage and moral injury suffered by victims of disappearance or arbitrary detention and their next of kin;

(g) The assurance that the State party will act on the recommendations and concerns addressed to it by the Committee.

C. Subjects of concern

126. The Committee expresses concern about:

(a) The non-existence of information on the full implementation of article 2 of the Convention, notably in the cases provided for in paragraphs 2 and 3 relating to exceptional circumstances and an order from a superior officer or a public authority as grounds for excluding criminal responsibility;

(b) The considerable extension of the time limit for police custody, the period during which the risk of torture is greatest, both in criminal law and in anti-terrorist legislation, which has been effected subsequent to the consideration of the second periodic report;

(c) The non-existence, during the period of police custody, of guarantees of rapid and appropriate access by persons in custody to a lawyer and a doctor, and to a relative;

(d) The increase, according to some information, in the number of arrests for political reasons during the period under consideration, the increase in the number of detainees and prisoners in general, including political prisoners, and the increase in the number of allegations of torture and cruel, inhuman or degrading treatment or punishment, allegations implicating the National Surveillance Directorate (DST);

(e) The lack of information about measures taken by the judicial, administrative and other authorities to act on complaints and undertake inquiries, indictments, proceedings and trials in respect of perpetrators of acts of torture, notably in the case of acts of torture verified by the Independent Arbitration Commission for compensation for material damage and moral injury suffered by the victims of disappearance or arbitrary detention and their next of kin;

(f) The application to acts of torture of the prescription period provided for by ordinary law, which would appear to deprive victims of their imprescriptible right to initiate proceedings;

(g) The non-existence of a provision of criminal law prohibiting any statement obtained under torture from being invoked as evidence in any proceedings;

(h) The number of fatalities in prisons;

(i) Prison overcrowding, and the allegations of beatings and violence between prisoners.

D. Recommendations

127. **The Committee recommends that the State party:**

(a) **In the context of the ongoing reform of the Criminal Code, include a definition of torture which is fully consistent with the provisions of articles 1 and 4 of the Convention;**

(b) **In the context of the ongoing reform of the Criminal Code, clearly prohibit any act of torture, even if perpetrated in exceptional circumstances or in response to an order received from a superior officer or public authority;**

(c) **Limit the period of police custody to a strict minimum and guarantee the right of persons in police custody to rapid access to a lawyer, a doctor and a relative;**

(d) **Include in the Code of Criminal Procedure provisions organizing the imprescriptible right of any victim of an act of torture to initiate proceedings against any torturer;**

(e) **Take all necessary measures to eliminate impunity for public officials responsible for torture and cruel, inhuman or degrading treatment;**

(f) **Ensure that all allegations of torture or cruel, inhuman or degrading treatment are immediately investigated impartially and thoroughly, especially allegations relating to cases and situations verified by the aforementioned Independent Arbitration**

Commission and allegations implicating the National Surveillance Directorate in acts of torture, and ensure that appropriate penalties are imposed on those responsible and that equitable compensation is granted to the victims;

(g) Inform the Committee of the outcome of impartial inquiries into all deaths in police custody, detention or prison, in particular deaths alleged to be the result of torture;

(h) In the context of the ongoing reform of the Criminal Code, incorporate a provision prohibiting any statement obtained under torture from being invoked as evidence in any proceedings, in conformity with article 15 of the Convention;

(i) Withdraw the reservation made concerning article 20 and make the declarations provided for in articles 21 and 22 of the Convention;

(j) Devote a part of its next periodic report to measures taken to comply with the conclusions and recommendations addressed to it by the Committee;

(k) Provide in its next periodic report detailed statistics on complaints of acts of torture or other cruel, inhuman or degrading treatment or punishment perpetrated by public officials, and on inquiries, proceedings and criminal and disciplinary sanctions relating to those complaints, disaggregated by offence, age and sex of victim, and position of the perpetrator of the offence. The State party should also provide information on the results of any inspection of any place of detention, the measures taken by the authorities to find solutions to the problems of prison overcrowding, and action taken on allegations of violence between prisoners.

128. **The Committee recommends that the present conclusions and recommendations, and the summary records of the meetings at which the State party's third periodic report was considered, should be widely disseminated in the country in the appropriate languages.**

129. **The Committee requests the State party to provide within one year information on the action it has taken on its recommendations contained in paragraph 127 (c), (f) and (g) above.**

NEW ZEALAND*

130. The Committee considered the third periodic report of New Zealand (CAT/C/49/Add.3) at its 604th, 607th and 616th meetings, held on 11, 12 and 19 May 2004 (CAT/C/SR.604, 607 and 616), and adopted the following conclusions and recommendations.

A. Introduction

131. The Committee welcomes the third periodic report of New Zealand, which was prepared in accordance with the Committee's guidelines. It notes, however, that the report was submitted with a three-year delay.

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* Also published as CAT/C/CR/32/4.

132. The Committee welcomes with appreciation the additional written and oral information provided, as well as the attendance of a high-level delegation, which demonstrates the State party's willingness to maintain an open and fruitful dialogue with the Committee.

B. Positive aspects

133. The Committee notes with appreciation:

(a) The adoption of the 1999 Extradition Act, responding to the Committee's previous recommendations;

(b) The cooperation undertaken with the Office of the United Nations High Commissioner for Refugees and the willingness to comply with its guidelines and recommendations;

(c) That the Mangere Accommodation Centre can be considered to be more of an open centre than a detention centre;

(d) The Police Detention Legal Assistance Scheme, which provides for initial free legal advice to be obtained by persons in police custody;

(e) Legislative and administrative developments that enhance compliance with the Convention, in particular the 2000 Protocol between the Department of Corrections and the Ombudsman's Office, the 1998 amendment to the Mutual Assistance in Criminal Matters Act, and the 2000 International Crimes and International Criminal Court Act;

(f) Measures taken to improve the effectiveness and strengthen the independence of the Police Complaints Authority;

(g) The efforts undertaken to promote a positive relationship between the police and Maori;

(h) The efforts undertaken to establish new Child, Youth and Family Residential Facilities;

(i) The ongoing elaboration of a national plan of action on human rights by the Human Rights Commission;

(j) The declared intent to withdraw reservations to the Convention against Torture and the Convention on the Rights of the Child, and to ratify the Optional Protocol to the former Convention.

C. Subjects of concern

134. The Committee expresses concern about:

(a) The fact that the immigration legislation does not include the non-refoulement obligation provided for in article 3 of the Convention.

(b) The significant decrease in the proportion of asylum-seekers who are immediately released without restriction into the community upon arrival and the detention of several asylum-seekers in remand prisons, who are not separated from other detainees;

(c) The process of issuing a security-risk certificate under the Immigration Act, which could lead to a breach of article 3 of the Convention as the authorities may remove or deport a person deemed to constitute a threat to national security, without having to give detailed reasons or to disclose classified information to the person concerned; possibilities of effective appeal are limited; and the fact that the Minister of Immigration has to decide within three working days whether to remove or deport the person concerned;

(d) Cases of prolonged non-voluntary segregation in detention (solitary confinement), the strict conditions of which may amount, in certain circumstances, to acts prohibited by article 16 of the Convention;

(e) The low age of criminal responsibility, and the fact that juveniles are sometimes not separated from adult detainees and have been detained in police cells, owing to a shortage of Child, Youth and Family Residential Facilities;

(f) The findings of the Ombudsman regarding investigations of alleged assaults by prison staff on inmates, in particular the reluctance to address such allegations promptly and the quality, impartiality and credibility of investigations.

D. Recommendations

135. **The Committee recommends that the State party:**

(a) Incorporate in its immigration legislation the non-refoulement obligation contained in article 3 of the Convention against Torture and consider establishing a single refugee determination procedure in which there is first an examination of the grounds for recognizing refugee status as contained in the 1951 Convention relating to the Status of Refugees, to be followed by the examination of other possible grounds for the grant of complementary forms of protection, in particular under article 3 of the Convention against Torture;

(b) Ensure at all times that the fight against terrorism does not lead to a breach of the Convention and impose undue hardship on asylum-seekers, and establish a time limit for the detention of and restrictions on asylum-seekers;

(c) Immediately take steps to review the legislation relating to the security-risk certificate in order to ensure that appeals can effectively be made against decisions to detain, remove or deport a person, extend the time given to the Minister of Immigration to adopt a decision and ensure full respect of article 3 of the Convention;

(d) Reduce the time and improve the conditions of non-voluntary segregation (solitary confinement) which can be imposed on asylum-seekers, prisoners and other detainees;

(e) Implement the recommendations made by the Committee on the Rights of the Child (CRC/C/15/Add.216, paras. 30 and 50);

(f) Report on the results of the development strategy aimed at ensuring that minors are not subjected to unreasonable searches;

(g) Carry out an inquiry into the events that led to the decision of the High Court in the *Taunoa et al.* case;

(h) Inform the Committee about the results of the action taken in response to the concern expressed by the Ombudsman regarding investigations of assaults by prison staff on inmates.

136. **The Committee welcomes the State party's willingness to ratify the 1954 Convention relating to the Status of Stateless Persons, and the Convention relating to the Reduction of Statelessness, and recommends that it ratify these instruments in a timely manner.**

137. **The Committee recommends that the State party disseminate widely the Committee's conclusions and recommendations, in appropriate languages, through official web sites, the media and non-governmental organizations.**

138. **The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraph 135 (b), (c), (d) and (h) above.**

139. **The Committee, considering that the third periodic report also includes the fourth periodic report due on 8 January 2003, invites the State party to submit its fifth periodic report on 8 January 2007.**

YEMEN*

140. The Committee considered the initial report of Yemen (CAT/C/16/Add.10) at its 583rd and 586th meetings, held on 17 and 18 November 2003 (CAT/C/SR.583 and 586), and adopted the following conclusions and recommendations.

A. Introduction

141. The Committee welcomes the initial report of Yemen and the opportunity to initiate a dialogue with the State party. It regrets, however, that the report, due on 4 December 1992, was submitted almost 10 years late.

142. The report, which provides extensive information on legal provisions but fails to address in detail the practical implementation of the Convention or difficulties encountered in this regard, does not fully comply with the reporting guidelines of the Committee. The Committee welcomes the readiness of the delegation to engage in a frank and open dialogue.

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* Also published as CAT/C/CR/31/4.

B. Positive aspects

143. The Committee welcomes the ongoing efforts of the State party to reform its legal system, revise its legislation and uphold democratic values, in particular:

(a) The establishment of the Human Rights Ministry in 2003 aimed at promoting and ensuring respect for human rights, including consideration of individual complaints;

(b) The permission granted to many non-governmental organizations to operate freely in the country;

(c) The provisions of enacted laws protecting human rights, for example, article 149 of the Constitution; article 6 of the Code of Criminal Procedure No. 3 of 1994; article 21 of the Code of Military Crimes and Penalties, 1998; article 9 of the Police Corps Act No. 15/2000; article 35 of the Penal Code; and the ratification by Act No. 36 of 1983 of the Arab Convention on Judicial Cooperation;

(d) The stated intention of the State party to ratify the Rome Statute of the International Criminal Court and steps taken at the national level in this respect;

(e) The ratification of the major human rights instruments and the incorporation of the provisions of these international treaties into the domestic legal order;

(f) The human rights education and training activities and the State party's openness to international cooperation, as reflected in the agreement concluded with the Office of the High Commissioner for Human Rights;

(g) The assurances received from the delegation that it intends to establish special institutions ("halfway houses") to receive vulnerable women leaving prison;

(h) The access accorded to the International Committee of the Red Cross to persons held by the Political Security Department.

C. Factors and difficulties impeding the implementation of the Convention

144. The Committee, while aware of the difficulties that the State party faces in its prolonged fight against terrorism, recalls that no exceptional circumstances whatsoever can be invoked as a justification for torture. It stresses in particular that the reactions of the State party to such threats must be compatible with article 2, paragraph 2, of the Convention and within the limits of Security Council resolution 1373 (2001).

D. Subjects of concern

145. The Committee expresses concern about the following:

(a) The lack of a comprehensive definition of torture in the domestic law as set out in article 1 of the Convention;

(b) The nature of some criminal sanctions, in particular flogging and amputation of limbs, which may be in breach of the Convention;

(c) Reports of the frequent practice of incommunicado detention by Political Security Department officials, including occurrences of mass arrests and detention for prolonged periods without judicial process;

(d) The failure in practice to enable detained persons to obtain access to a lawyer, a doctor of their choice or relatives from the outset of their detention;

(e) The apparent failure to investigate promptly, impartially and fully the numerous allegations of torture and breaches of article 16 of the Convention and to prosecute alleged offenders;

(f) Reported cases of deportation of foreigners without the opportunity for them to legally challenge those measures which, if found to be the case, may be in breach of the obligations imposed by article 3 of the Convention;

(g) The failure of the State party to provide detailed information relating to modalities of compensation and rehabilitation of victims of ill-treatment by the State;

(h) The situation of women who have served their prison sentences but who remain in prison for prolonged periods;

(i) The Committee is concerned at the low minimum age of criminal responsibility and at the detention of child offenders as young as 7 years in specialized hospitals or social protection institutions.

E. Recommendations

146. **The Committee recommends that the State party:**

(a) Adopt a definition of torture which covers all elements of that contained in article 1 of the Convention, and amend domestic penal law accordingly;

(b) Take all appropriate measures to ensure that criminal sanctions are in full conformity with the Convention;

(c) Ensure that all detained persons have immediate access to a doctor and a lawyer, as well as contact with their families, at all stages of detention and that detainees held by the Political Security Department are given prompt access to judges;

(d) Take all appropriate measures to abolish de facto incommunicado detention;

(e) Take immediate steps to ensure that arrests and detentions are carried out under independent and impartial judicial supervision;

(f) Ensure that all counter-terrorism measures taken are in full conformity with the Convention;

(g) Ensure that the expulsion, refoulement or extradition of a person to another State is in compliance with article 3 of the Convention;

(h) Take measures to establish an effective, reliable and independent complaints system to undertake prompt and impartial investigations into allegations of ill-treatment or torture by police and other public officials, and punish the offenders;

(i) Strengthen efforts to reduce any occurrences of torture or other ill-treatment by police and other public officials, and collect data that monitors such acts;

(j) Ensure the right of torture victims to fair and adequate compensation from the State and set up programmes for the physical and psychological rehabilitation of victims;

(k) Continue and expand efforts to establish "half-way homes" for women in order to avoid their remaining in prison beyond the expiration of their sentence;

(l) Review the minimum age of criminal responsibility and ensure that all protective institutions and other places of detention meet international juvenile justice standards, including those of the Convention;

(m) Consider making the declarations under articles 21 and 22 of the Convention and ratifying the Optional Protocol to the Convention;

(n) Consult closely with the Office of the High Commissioner for Human Rights, the United Nations independent human rights mechanisms and country-based programmes to develop appropriate education and training programmes on, inter alia, the United Nations human rights treaty body reporting processes and programmes aimed at enforcing the prohibition of torture and ill-treatment.

147. The Committee recommends that the next State party report should comply with the reporting guidelines of the Committee and include, inter alia:

(a) Detailed information on the practical implementation of its legislation and the recommendations of the Committee;

(b) Detailed statistical data, disaggregated by crime, geographical location, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as related investigations, prosecutions, and penal and disciplinary sentences.

148. The Committee recommends that the State party widely disseminate the reports submitted by Yemen to the Committee and the Committee's conclusions and recommendations, in appropriate languages, through official web sites, the media and non-governmental organizations.

149. **The Committee invites the delegation to submit complementary written information regarding the questions raised during the dialogue that remain unanswered.**

150. **The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 146 (d) and (f) above.**

Note

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[1] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 48* (A/58/48), paras. 93-100.

IV. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION

A. General information

151. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned.

152. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

153. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

154. The Committee's work under article 20 of the Convention continued during the period under review. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed. However, in accordance with article 20, paragraph 5 of the Convention, the Committee may, after consultations with the State party concerned, decide to include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly. Such a summary account is herewith provided in connection with Serbia and Montenegro.

155. In the framework of its follow-up activities the Committee appointed, at its thirty-first session, one of its members, Mr. Rasmussen, to carry out activities aiming at encouraging States parties on which inquiries had been conducted and the results of such inquiries had been published, to take measures to implement the Committee's recommendations. Mr. Rasmussen initiated contacts with such States in order to obtain information about the measures they had taken so far.

B. Summary account of the results of the proceedings concerning the inquiry on Serbia and Montenegro

1. INTRODUCTION

156. On 19 December 1997 the Humanitarian Law Center (HLC), a non-governmental organization based in Belgrade, submitted information to the Committee containing allegations of systematic use of torture within the territory of Serbia and Montenegro and requested the Committee to examine the situation under article 20 of the Convention. In May 1998 the Committee invited HLC to submit additional information substantiating the facts of the situation. In November 1998 the information received from HLC was transmitted to the State party, which

was requested to submit its observations. Owing to the political situation in the country at that time, the Committee decided to postpone its examination of the situation. In May 2000, the Committee decided to reiterate its request to the State party to submit observations on the allegations received. The observations were finally submitted on 23 August 2000.

157. In November 2000, the Committee decided to establish a confidential inquiry, in view of the fact that the information available to it provided well-founded indications that torture was being systematically practised in the country. At the same time, the Committee requested the Government to agree to a visit by the members designated to conduct the inquiry. The Government agreed to the visit, which took place from 8 to 19 July 2002.

II. VISIT TO SERBIA AND MONTENEGRO FROM 8 TO 19 JULY 2002

158. The visit was undertaken by Peter Burns, Andreas Mavrommatis and Ole Vedel Rasmussen. The Committee members visited Belgrade where they held discussions with the Minister for Foreign Affairs, representatives of the Federal Ministry of Justice, the Serbian Deputy Minister of Justice, the Serbian Minister of the Interior and his principal private secretary, the Serbian Public Prosecutor, the Director of the Serbian prison system, members of the Serbian Supreme Court, the head of the Belgrade District Court, the head of the Department of Public Security (Chief of Police) at the Serbian Ministry of Internal Affairs, the Supreme Military Prosecutor and the Coordinator of the Commission for Truth and Reconciliation. They also met with representatives of the Organization for Security and Cooperation in Europe (OSCE) Mission in Serbia and Montenegro, the Council of Europe and non-governmental organizations (NGOs). The members also travelled to Novi Pazar, where they met with the District Prosecutor and representatives of NGOs. Visits were also made to a number of police stations and prisons in Belgrade and other parts of Serbia.

159. Furthermore, the members visited Podgorica, Montenegro, where they met with the Acting Foreign Minister and Deputy Prime Minister, the Minister of Justice, the Deputy Minister of Internal Affairs and the Public Prosecutor. While in Montenegro the members also met with NGO representatives and visited two police stations and the Spuž prison (see sect. V below). In view of the fact that the Yugoslav authorities had not exercised power over the territory of Kosovo since the establishment there of the United Nations Mission in Kosovo (UNMIK) in 1999, the Committee felt that it was advisable not to include Kosovo in the visit.

160. The Federal and Republican authorities were supportive of the visit and very cooperative. The members visited prisons and places of detention without prior notice and talked in private with detainees. The only difficulty encountered by the members was related to the interviews with pre-trial detainees. By law, such interviews had to be approved by the respective investigating judges, a rule that applied to any person wishing to meet a pre-trial detainee. Unfortunately, the members had not been informed of this requirement before arriving in the country. In the end, the necessary authorizations were obtained and the members were able to interview some pre-trial detainees. However, the Committee members would have wished that the State party had made the necessary arrangements beforehand, so as to avoid delays in their programme of work.

III. FINDINGS OF THE COMMITTEE WITH RESPECT TO SERBIA

161. The widespread use of torture under the regime of President Slobodan Milosevic has been extensively documented by national and international NGOs, the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia of the Commission on Human Rights and OSCE. Direct testimonies and information from governmental and non-governmental sources received by the members prior to and during their visit to Serbia confirmed the reliability of the information contained in those reports and the assessment that torture was systematically used during the Milosevic regime, mainly for political reasons. A considerable amount of information in this respect is contained in the Committee's files and excerpts were transmitted to the State party.

162. The information collected by the members during their visit to Serbia and Montenegro showed that the characteristics and frequency of torture changed completely after October 2000, under the new political regime. Their findings in this respect are based mainly on testimonies obtained from persons at liberty claiming to have been tortured or ill-treated, detainees, NGOs, prison doctors, law enforcement personnel, government officials and members of the judiciary.

A. Information obtained through interviews with alleged victims and visits to places of deprivation of liberty

163. The Committee members interviewed two persons at liberty who alleged that they had been tortured while they were in detention. They also conducted private interviews with 40 persons deprived of their liberty. The interviewees were selected from among those who had arrived most recently in the places of detention that were visited. Some were selected on the basis of medical records kept in those places for the months preceding the visit. Ten interviewees stated that they had been treated in a way that the Committee members considered could fall within the definition of torture contained in article 1 of the Convention.

164. At each prison and police station visited, the Committee members examined the log books which, in general, were well kept. At the police stations, the members looked at the rooms used for interrogation and the cells in which detainees were held. Although the visit was not intended to focus on the material conditions of detention, the members could not help being struck by some of those conditions. For example, the cells in most of the police stations were unlit, unventilated, unfurnished and lacked acceptable sanitation facilities.[1] As for the conditions in prisons, the members noted that the time allowed for daily outdoor exercise by remand prisoners was far too short (about half an hour). The rest of the day prisoners stayed in their cells without being offered any purposeful activities. Some were even kept in solitary cells for long periods. Furthermore, there seemed to be no system of inspection by independent experts of conditions of imprisonment. Prisoners wishing to file complaints could only do so by writing to the Ministry of Justice. The Helsinki Committee for Human Rights, which had recently been allowed to visit some prisons, told the members of the Committee that such complaints remained largely unanswered.

165. As a whole, the members of the Committee got the impression that the situation in prisons had improved significantly since October 2000 and that the authorities had been successful in reforming staff practices, retaining only those staff members who were committed to appropriate behaviour. That impression was confirmed by the testimonies of the prisoners themselves.

1. Prisons

Belgrade Central Prison

166. A Committee member with medical expertise examined the medical records of 70 pre-trial detainees who were under the jurisdiction of the Belgrade District Court. Fifty-five of them contained no indications of ill-treatment or physical violence by the police. In the remaining 15 records (representing 21 per cent), it was noted that the detainees had alleged having been beaten by the police. In six of them (representing approximately 9 per cent of the total number of records examined) marks had been found and were described by the examining doctor. Furthermore, the prison doctor told the members that approximately one third of the prisoners bore lesions upon their arrival, though the lesions were not necessarily due to ill-treatment by the police. Where the prisoners (about 10 per cent of them) alleged having been beaten by the police, the lesions were generally light, such as bruises. The allegations made by the prisoners were always reflected in their medical records. The doctor also indicated that there were no cases of inmates being beaten by the prison guards, although such cases had been frequent in the past.

167. The Committee members also interviewed 21 pre-trial detainees, some of whom were selected on the basis of the medical records examined. All of them were charged with common crimes. Nine of them reported having been beaten or subjected to other forms of torture by the police in order to obtain confessions.

Sremska Mitrovica Prison

168. At Sremska Mitrovica Prison, with over 1,000 inmates the largest in the country, the members were informed that the new management team had introduced important changes. Until the end of 2000, disciplinary measures in reported cases of ill-treatment had not been taken against those found guilty of such abuses. However, the director claimed that all problematic guards had been transferred. Since then, no conflicts between prisoners and staff or incidents of inter-prisoner violence had been observed. The prison doctor confirmed that there had been no acts of torture or ill-treatment in the prison.

169. Five inmates were interviewed in this prison, none of whom reported having been tortured before or during their stay in the prison. Four of them said that the situation had changed completely over the previous two years, since the arrival of the new director and the removal of some of the guards. One inmate, kept in a punishment cell after having tried to escape from prison, did not complain of any ill-treatment by the staff.

Pozarevac Penitentiary for females

170. Six inmates were interviewed individually in the closed section. None of them alleged having been tortured or ill-treated by the police or prison guards. In the open and semi-open sections a group of prisoners reported previous cases of ill-treatment. However, they described the current situation as very good. One prisoner reported an incident in which a guard had beaten her on the palm of her hand in anger while she was working in the field. Reportedly, the guard was suspended and disciplinary procedures were ongoing. The prison doctor confirmed that in the previous three years she had not learnt of any case of torture or ill-treatment.

Belgrade Military Prison

171. One inmate was interviewed in this prison. He had been arrested on charges of desertion. He made no allegations of torture or ill-treatment.

2. Police stations

172. The members of the Committee visited nine police stations, namely those at Bozidura Adzije, Rakovica, Vozdovac, Palilula, 29 November, Stari Grad and Milan Rakic Streets in Belgrade, the Smederevo main police station and the central police station in Novi Sad. At the time of the visit there were two detainees in Vozdovac, one in Milan Rakic and one in Smederevo. None of them reported having been tortured or ill-treated. At the 29 November police station there was only one old man in the detention area; he did not allege any maltreatment. One member of the Committee spoke with two alleged illegal immigrants who were waiting to see the judge for misdemeanours; they indicated that they had been treated well.

B. Information submitted by non-governmental organizations

173. Representatives of NGOs with whom the Committee members met provided information on cases of torture brought to their attention by the alleged victims. In their view, massive violations of the right to freedom from torture had not been registered since the change of Government. However, the frequency with which law enforcement officers resorted to excessive force in the performance of their duty remained a matter of concern. They said that much remained to be done regarding the training of law enforcement personnel on human rights matters and that further personnel changes in the police had to be carried out in order to make a clear break with the practices of the former regime and restore public confidence in law enforcement agencies. They reported that torture was frequently used as a means of extracting information. However, in many instances torture was due to the mentality prevailing among policemen, for whom the use of excessive force had always been part of their routine work. Moreover, NGOs pointed out that since the change of Government few alleged perpetrators of acts of torture reportedly committed under the old regime had been investigated or tried.

174. HLC provided information on 12 selected cases involving 21 alleged victims that occurred between 1 December 2000 and March 2002. They reportedly took place in Belgrade, Smederevo, Becej (Vojvodina), Presevo, Novi Sad, Smederevska Palanka, Srbobran (Vojvodina), Vladicin Han, Kragujevac and Backa Palanka. All the victims alleged having been severely beaten; one reported having received electric shocks and another, an asthmatic patient, was not allowed to use his inhalator when he suffered a serious attack of asthma at the police station. Six of the alleged victims were Roma.

175. The Yugoslav Lawyers Committee for Human Rights provided information on 16 cases, all but 4 of which had occurred in Serbia after 5 October 2000. The reports alleged severe beatings with truncheons, *falaqa*, denial of medical assistance to an unconscious victim, sexual assault (possibly rape) and the discharge of firearms close to the head. The incidents reportedly took place in the street, as well as during questioning at police stations. In one case the victim was allegedly beaten by prison guards and in another by soldiers. The locations included Belgrade, Leskovac, Tutin, Sjenica (both in the Sandzak), Surdulica, Prokuplje and Vranje.

176. The Minority Rights Centre, an NGO that monitors the situation of Roma, reported that this minority was particularly exposed to violence by the police and provided some examples, which are included in a report entitled "Abuses of Roma Rights in Serbia".[2] Information was also received from other NGOs following the visit, including the Leskovac Committee for Human Rights, the Sandzak Committee for Human Rights and Freedoms and the Bujanovac Committee for Human Rights. The cases presented came from most regions of Serbia.

C. Information received from government officials

177. Virtually all government officials with whom the members of the Committee met admitted that torture had been practised extensively under the former regime. They claimed, however, that under the new Government the situation had changed completely, particularly as far as the attitude of the police was concerned.

178. The Minister of Internal Affairs stated that torture was no longer used by the police. Some cases of excessive use of force had occurred since October 2000, but the appropriate measures had been adopted. Those measures included initiating disciplinary and, if necessary, criminal investigations and the suspension from service of the alleged perpetrators while the investigations were being conducted. He also said that all the senior officers of the Ministry had changed and that the process of changing other personnel was almost completed in all regions. Almost two thirds of the heads of police stations throughout Serbia had changed.

179. The Director of Prisons at the Ministry of Justice stated that torture in prisons had been eradicated. This had been achieved mainly by changing the wardens and their deputies. A large number of prison staff had been dismissed and criminal charges had been brought against many of them. He did not have statistics, however, about the number of persons involved. Cases of excessive use of force by prison guards were now rare and ended up generally with the dismissal of those found guilty. The Ministry did not have statistics about those cases either. All prisoners were examined by a doctor upon their arrival in prison. If they alleged having been tortured or ill-treated by the police, this information would be included in their medical reports and made available to the investigating judge. He acknowledged that a system of prison inspection by an independent body did not exist. For that reason he had invited the Helsinki Committee for Human Rights to carry out visits to prisons. Efforts were being made, however, to establish a monitoring system with the participation of experts not belonging to the Ministry.

D. Legal safeguards for the prevention of torture and ill-treatment

180. The new Criminal Procedure Code (CPC), which entered into force on 28 March 2002, contains important improvements with respect to its predecessor regarding law enforcement procedures at the pre-trial stage. Some of these improvements are of direct relevance to the prevention of torture, such as limits on the time that a person can be held in police custody and the right to a defence counsel. However, CPC is not applicable to persons detained on suspicion of committing a misdemeanour. According to the Law on Misdemeanours, the police may detain suspects for up to 24 hours before bringing them before a judge. Suspects have no right of access to a defence counsel while in police custody. The Committee members noted that suspected misdemeanours were frequently cited as the reason for detention in police stations. According to information provided to them by the Ministry of Internal Affairs, in the period from January to June 2002, 1,918 persons were detained and 1,865 were deprived of their liberty.

Of these 1,104 persons were detained in police premises for misdemeanours against public order alone. On the basis of these statistics, the protection afforded by the new CPC, including the right of access to a defence counsel, appears not to apply to a significant number of individuals detained by the police.

181. The general principle concerning the right to a defence counsel is contained in article 5 of CPC, according to which a person deprived of liberty shall be immediately informed that he is entitled to a defence counsel of his own choice and to request that members of his family or other persons close to him be informed of his detention.

182. Article 226 of CPC provides that in the course of collecting information an individual may be summoned by the police but may not be questioned for more than four hours. Force may not be used to obtain information from citizens. An official note or a record shall be read to a person who has given information. This person may raise objections, and the police authorities are obliged to note them in the official note or record. The same article states that when the police are collecting information from a person who for good reasons is suspected of being the perpetrator of a criminal offence, that person may be summoned as a suspect; the summons shall contain information to the effect that the suspect is entitled to have a defence counsel. If in the course of collecting information the police authority deems the person who is summoned to be a suspect, it should immediately inform him of the criminal offence with which he is charged, of his right to have a defence counsel, who shall be present at further interrogations, and that he is not obliged to answer the questions put to him in the absence of his defence counsel. Article 226 also stipulates that the police authority shall inform the public prosecutor when a suspect is being interrogated; the public prosecutor may be present at the interrogation.

183. According to article 5 of CPC, a person who has been detained without a court warrant shall immediately be brought before the competent investigating judge. Article 227, paragraph 3, states that if the escort of the person deprived of liberty takes longer than eight hours, owing to unavoidable obstacles, the authorized police official is obliged to give the reasons for the delay in a statement to be submitted to the investigating judge. Furthermore, article 229 stipulates that a person deprived of liberty cannot be held by the police for the purpose of gathering information for more than 48 hours before being brought before a judge.[3]

184. According to the information received by the Committee members, the above principles seem to be generally observed in cases where CPC applies. Nevertheless, torture still seems to take place during the 48 hours before the suspect is brought before a judge and before he is given the opportunity to contact his lawyer. Sometimes the suspect is not allowed to call in his lawyer or does not know a lawyer, in which case he is obliged to choose one from the list proposed by the police. In some of the cases examined by the members the alleged victims complained that the lawyer's role had been perfunctory and that he had paid no attention to the fact that his client had been ill-treated.

185. Some of the officials with whom the Committee members met argued that it did not make sense for the police to extract confessions under duress, given that such confessions could not be used as evidence in legal proceedings. In this regard, article 89 of CPC stipulates that it is forbidden to use force in order to obtain a statement or confession from a defendant and that, in case of failure to comply with this provision, the decision of the court may not be based on such statements or confessions. The members believe, however, that even if convictions cannot be based exclusively on confessions the police still use the information extracted from detainees to

complete their investigations. Incidentally, some of the police officers interviewed by the Committee members during their visits to police stations claimed that they lacked modern equipment for crime investigation and had to use very rudimentary tools.

186. In his meeting with the Committee members the Public Prosecutor underlined the efforts being made to change the police mentality. In his opinion, such change had to accompany the changes with regard to personnel and the internal reorganization of the police force currently under way. The police approach to the collection of evidence had to change too. The police had to understand that evidence of a crime could only be obtained through legal means. This was very important for his Office since, under the Yugoslav legal system, public prosecutors did not direct the police investigation and could not give instructions to the police on how to collect evidence.

187. The need to change the police mentality was underlined by several interlocutors, as well as in a report published in October 2001 by OSCE, entitled "Study on Policing in the Federal Republic of Yugoslavia". According to this report, "the reason why so many situations are accompanied by assaults, resistance and resentment is because the police officers not only fail to act, but fail to understand that it is their duty to act, according to a professional code of conduct. In the absence of a Code of Ethics or Policing Principles, this latter unsatisfactory situation would seem to prevail throughout Yugoslavia. It is therefore proposed that a major programme of education in human rights for police officers be introduced throughout the police forces of Yugoslavia that is credible and practically related to operational police situations".[4]

E. Investigation and punishment of those responsible for torture

1. Disciplinary proceedings

188. The Chief of Public Security for Serbia, who is responsible for Internal Police Oversight at the Ministry of Internal Affairs, explained to the Committee members that each regional police department had a unit of internal control that reviewed and supervised every police officer. If a unit received information on police abuses from any source, it could initiate an investigation and bring the case before the corresponding disciplinary tribunals established by the Ministry. Disciplinary measures included a reduction in monthly salary of up to 30 per cent for one to six months and transfer to a lower salary level for a certain time. Ultimately, the officer concerned could be dismissed from service. Disciplinary proceedings could be conducted, regardless of any criminal procedure under way. The Committee members were subsequently informed by the Ministry that 392 complaints had been submitted against the police in the period January-June 2002, of which 43 cases were considered to be well founded and resulted in the initiation of disciplinary proceedings. However, the information did not specify how many complaints included allegations of torture or ill-treatment and whether any criminal proceedings had been initiated.

189. The members note that, according to the Decree on Disciplinary Responsibilities in the Ministry of Internal Affairs,[5] which regulates internal disciplinary proceedings, the decision whether to proceed with such proceedings lies with the officer immediately in command of the officer against whom a complaint has been made. The commanding officer assesses whether the evidence gives rise to suspicion that a violation has taken place and passes the case on to the prosecutor of the disciplinary tribunal. This gives commanding officers the opportunity to block

proceedings against members of their unit. Furthermore, the members received allegations indicating that the Decree and police practice failed to ensure that any injured party is informed of the progress and outcome of the proceedings.

190. Regarding the functioning of the disciplinary tribunals, NGOs reported that, although the police are now far more responsive to the complaints and observations of human rights organizations, they frequently attempt to deny that a specific instance of torture occurred or, if that is impossible because of compelling evidence (such as medical records, photographs and eyewitnesses), they tell the public that the case will be investigated and the perpetrators brought to account. However, this does not always happen. In serious cases of torture, and in spite of clear evidence to the contrary, disciplinary tribunals regularly give more credence to the statements of the officers involved than to those of the victims. Furthermore, there seem to be instances in which officers serving on disciplinary tribunals have themselves been accused of committing acts of torture.

191. In its study on policing referred to earlier, OSCE said that there was a need to assure the quality of the work of all Internal Control Units in a way that satisfied the public and that in order to address the public's concerns it was necessary to create an independent body with substantial powers of oversight and intervention. The report added that there must be "external and totally independent oversight of police investigation of complaints in the future if the police are to be held properly accountable, but the Authority responsible for it must possess robust powers to require the production of documents, papers and files relating to the complaint and be empowered to direct further investigation if necessary".[6]

2. Criminal proceedings

192. The members of the Committee noted a number of weaknesses in the legislation regarding the prohibition of torture and in the functioning of the institutions charged with the investigation of complaints.

193. In its conclusions and recommendations on the initial report of Yugoslavia, the Committee expressed concern at the absence in the criminal law of a provision defining torture as a specific crime in accordance with article 1 of the Convention and recommended that the crime of torture be incorporated verbatim into the Yugoslav criminal codes.[7] This situation remains unchanged. As a result, the perpetrators of acts of torture can only be charged under criminal provisions such as "extraction of statements"[8] or "civil injury".[9] The scope of these provisions, however, is more restrictive than the definition in article 1. For instance, situations where torture is committed at the instigation of or with the consent or acquiescence of a public official do not seem to be envisaged in those provisions. Furthermore, judges in general do not seem to be fully aware of Yugoslavia's international obligations regarding human rights and the Convention in particular. This was confirmed by the members of the Serbian Supreme Court with whom the Committee members met, who stated that judges often learned about these obligations and the jurisprudence of international bodies only when NGOs brought them to their attention.

194. Broadly speaking, it seems that judges and prosecutors only undertake an investigation if they receive a formal complaint from the victim or his lawyer. When asked about the reaction of the investigating judges when somebody complained of torture, the members of the Supreme Court said that, in theory, the judges had to inform the public prosecutor about the facts and that

it was up to the public prosecutor to initiate proceedings. They added that in practice, however, the public prosecutors took action only when a lawyer filed a complaint and brought the case to public notice.

195. The lack of prosecutorial action was even more flagrant in the past and in regions such as Kosovo and Sandzak.[10] When Committee members raised this question with the Public Prosecutor of Serbia, especially regarding cases that occurred before October 2000, he said that some prosecutors were dealing with cases but that he did not have information about them at present. His Office had also dealt with some war crimes. However, they were very difficult to investigate because the evidence had to be provided by the police, who were not always willing to cooperate.[11]

196. One of the first obstacles encountered by the victims when filing complaints is the pressure to refrain from doing so put on them by the police, who threaten to press charges of their own against them. If the victims nevertheless go ahead with their complaints, the police systematically file complaints against them for obstructing a law enforcement officer in the performance of his duty (article 213 of the Serbian Criminal Code) or for breaching the public peace. The Committee members were informed of one such case in which the four-month suspended prison sentence for alleged obstruction (swearing at police officers) was almost as harsh as that given to a police officer for causing bodily injury. Furthermore, it was repeatedly alleged that the police complaint was usually dealt with very quickly, whereas the victim's complaint was investigated very slowly or not at all. While members of the Serbian Supreme Court told the Committee members that they could neither confirm nor dismiss this allegation, the Public Prosecutor said that he was aware of the situation.

197. Regarding the role of prosecutors in the investigation of complaints, a number of interlocutors, including the Public Prosecutor himself, underlined the fact that prosecutors have no control, in practice, over the police as far as the collection of evidence is concerned.[12] The Committee members note with concern that this is contrary to the provisions of article 46 of CPC, according to which the Public Prosecutor shall be competent to request that an investigation be carried out and to direct pre-trial proceedings. The same provision states that police officers and other State authorities competent to investigate criminal offences are under obligation to proceed with their inquiry whenever the competent public prosecutor so requests.

198. NGOs reported that prosecutors very often fail to prosecute acts of torture and do not even inform the alleged victim about the outcome of his/her complaint. The lack of notification, however, can be an important obstacle to the continuation of the proceedings. Under article 61 of CPC, when the prosecutor dismisses a criminal complaint or decides to withdraw charges, the injured party may assume the capacity of private prosecutor and proceed with the case within eight days of being notified of the prosecutor's decision. If the injured party does not receive such notification, the Code provides a time period of three months, starting from the date the complaint was dismissed or the charges withdrawn, for the injured party to institute criminal proceedings. Members of the Supreme Court confirmed that failure to notify was very common but that judges allowed the injured party to continue the proceedings as private prosecutor even in the absence of such notification.

199. NGOs provided information on a number of cases in which police officers had been found guilty of acts relating to torture. They alleged, however, that few cases reached the courts and that very seldom did those responsible for acts of torture receive sentences commensurate

with the gravity of the crime committed. The sentences rarely exceed six months' imprisonment and are frequently suspended, which allows the police officers in question to keep their jobs.[13] They also reported that normally police officers are not suspended from their duties while they are under investigation. Members of the Supreme Court shared the view that only a few cases of torture reach the courts. The Deputy Minister of Justice of Serbia said that only in a small number of cases do the victims of torture file complaints and that an even smaller number end up in convictions. Furthermore, the sentences given by the judges are generally very light, and are sometimes even conditional sentences.

200 NGOs also alleged that very often trials have to be postponed, even several times in the same case, because of failure by the accused policemen to show up at the hearings. Members of the Supreme Court confirmed this allegation. Apparently, when confronted with this situation judges complain to the competent head of the police, but such complaints do not always receive a proper response.[14]

201 Representatives of the Sandzak Committee for the Protection of Human Rights told the Committee members about some of the difficulties they faced when filing criminal complaints about incidents that had taken place some years earlier. They said that in 2001 and 2002 they filed 33 complaints regarding acts falling under articles 65 and 66 of the Serbian Criminal Code that had taken place in Sandzak, mainly in the 1990s. Only two, however, were under investigation; all the others had been dismissed. They said that it was very difficult for the lawyers to submit medical evidence, given that between 1992 and 1997 medical institutions were not allowed to provide medical reports to victims of police brutality. The documentary evidence that accompanied complaints consisted mainly of testimonies, names of witnesses and photographs. They said that, in their opinion, the District Prosecutor misinterpreted article 65 of the Serbian Criminal Code: according to his understanding, a crime existed only if the acts in question resulted in serious bodily harm. Another difficulty they encountered was that some of the cases involved crimes that were subject to statutory limitations.[15]

202 When the Committee members took these allegations up with the District Prosecutor of Novi Pazar, he pointed out that the time limit for submitting complaints under articles 65 and 66 was five years and that many of the cases were therefore subject to statutory limitations. He added that, apart from the 33 cases referred to above, his Office and the municipal judges had dealt with many others during the previous 10 years. He promised to collect data and some statistics in this regard and to forward them to the Committee. No information, however, was ever received.

IV. FINDINGS OF THE COMMITTEE WITH RESPECT TO MONTENEGRO

203 Only a few of the cases reported to the Committee by NGOs since 1997 occurred in Montenegro. During the visit, NGOs in Montenegro provided the Committee members with information about some cases. One NGO stated that its lawyers had filed 20 complaints which, at the time of the visit, were at different stages of the criminal procedure. None of the Committee's interlocutors described the use of torture in the Republic as systematic, either in the past or at the present time.

204 During their stay in Montenegro the members of the Committee visited the prison in Spuz. The Committee had not been informed of allegations of torture or ill-treatment in that prison. The prison director explained that, during the previous three years, he had been engaged

in an extensive reform programme which included staff training. A great deal of emphasis had been placed on establishing the best relations possible between staff and prisoners. In 2002 only two instances of excessive use of force were reported. The first incident concerned a mentally ill prisoner who had been beaten by a prison guard for refusing to leave his cell. The second concerned a prisoner who physically attacked a witness in court; force was used to subdue the prisoner when he had already begun to retreat. The guards involved in these two cases were punished by paying them only half of their salaries for three months. Had those acts resulted in serious injuries to the prisoners, the incidents would have been treated as assaults, i.e. as criminal cases.

205. The Director further explained that all prisoners were examined by a doctor upon their arrival in prison. Any injuries were noted. The medical reports were made available to the prisoner's lawyer, his or her family, the Minister of the Interior and the investigating judge. Furthermore, the doctor on duty told the Committee members that about five years earlier detainees complained frequently of having been tortured or ill-treated by the police when they arrived in prison and that there had been some serious cases. Since then the situation had changed a great deal, although there were still detainees who reported having been beaten and who had slight injuries. The members of the Committee looked at the medical records of the inmates who had arrived since January 2002. There were 167 men and 8 women, of whom 39 men had alleged having been beaten, 24 had injuries that had been described by the doctors as "not serious" and 3 had "serious" injuries.

206. While in Spuž the Committee members interviewed three prisoners. One of them, recently arrived, claimed that the police had beaten him in front of his family in Berhane. According to his medical report he had three fractured ribs. The second interviewee, who had been convicted of drug trafficking, stated that when he was arrested in 1998 he was held in custody for three days before being brought before a judge. He alleged that during those three days he had been beaten and threatened with a pistol shoved into his mouth in order to get him to provide information about drug dealers operating in Montenegro. Before being brought before a judge he did not have access to a lawyer. The third interviewee had been arrested some three days prior to the Committee's visit to Spuž, at the Yugoslav-Hungarian border, for attempted robbery and for shooting and wounding two petrol station attendants. He claimed that for about one day he was deprived of food and water, was not allowed to go to the toilet and was kept with his hands tied very tightly behind his back.

207. While in Montenegro the Committee members also visited the police station in Danilovgrad, where there were no detainees at the time. They also visited the central police station in Podgorica where there was one detainee who had just been arrested. Although the members insisted on interviewing him in private, they were not allowed to do so for reasons that were not clear.

208. The situation in Montenegro regarding the right to file complaints and to have one's complaint examined does not seem to differ much from that in Serbia. Victims who file complaints very often find themselves being prosecuted for obstructing a law enforcement officer in the performance of his duty, and investigating judges do not inform prosecutors of allegations of torture or ill-treatment made by detainees. The Montenegrin authorities still do not recognize the applicability of the new Federal Code of Criminal Procedure in the Republic and continue to apply the 1976 Code, under which a person arrested by the police has to be presented

before an investigating judge within 24 hours after his arrest. However, in certain cases article 196 permits detained persons to be kept in custody for 72 hours before having access to a lawyer and before being brought before an investigating judge. Furthermore, torture is not defined in the Criminal Code of Montenegro, which contains similar provisions to those laid down in articles 65 and 66 of the Serbian Criminal Code.

209. The government officials with whom the Committee members met expressed their commitment to the protection of human rights and explained some of the initiatives the Government of Montenegro was taking in this field, such as the drafting of a law to establish an ombudsman, the measures to improve the functioning of the criminal justice system and the reform of the police. They also expressed their willingness to cooperate with international organizations. The Deputy Minister of the Interior said that hotlines had been established and the telephone numbers regularly published in the daily newspaper so as to enable every citizen to call and complain about abuse of authority by officials. In addition, training programmes on human rights for the police force were being developed. In 2001 his Ministry had received nine complaints of torture, which resulted in disciplinary proceedings and the dismissal of 18 officers.

210. With respect to criminal proceedings, the Public Prosecutor of Montenegro said that although by law prosecutors could initiate proceedings ex officio, this possibility was used only in exceptional circumstances. He also said that his Office was promoting a reform that would allow public prosecutors to supervise and direct investigations conducted by the police.

V. CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

211. Since the beginning of the inquiry the Committee examined a great deal of information from reliable sources concerning the use of torture in Serbia and Montenegro prior to October 2000. That information was corroborated by testimony received by the three Committee members who visited the country from victims, witnesses and government officials. On the basis of that information the Committee concluded that torture had been systematically practised in Serbia prior to October 2000.[16] Furthermore, the Committee noted with dismay that, despite the gravity of the cases, no significant steps were being taken to investigate them, punish those responsible and compensate the victims. The Committee nevertheless welcomed the establishment of the Commission for Truth and Reconciliation[17] with a mandate to encourage and organize research on human rights abuses and breaches of international and humanitarian law and the law of war that took place in the territory of the former Yugoslavia, with a view to establishing the truth and contributing to general reconciliation within Serbia and Montenegro and with neighbouring countries. It noted that the Commission intended to collect as much testimony as possible and to establish a list of victims, but not necessarily a list of perpetrators, since it did not have judicial powers to deal with them.

212. In contrast with the situation prevailing in the country prior to October 2000, the Committee observed that, under the new political regime, the incidence of torture appeared to have dropped considerably and torture was no longer systematic.[18] Nonetheless, it was clear that cases of torture continued to occur, particularly in police stations, and that reforms of the police and the judiciary had yet to demonstrate their full effectiveness in preventing and punishing the practice. In order to put an end to an apparent culture of impunity, senior police officers, judges and prosecutors who seemed to adopt a reactive approach to the problem of torture must become proactive in dealing with it. Currently, their actions appear to depend largely on the

existence of public pressure to act in certain cases, the submission of criminal complaints by private individuals or NGOs representing them, or the initiation of private prosecutions. The Committee wishes to recall in this regard that the State party has an obligation to spare no effort to investigate all cases of torture, provide compensation for the loss or injury caused and prosecute the persons responsible. Furthermore, under Security Council resolution 827 (1993) and the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the State party also has an obligation to cooperate fully with the Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law, including torture.

213. In the light of these conclusions, the Committee considered it appropriate to make the following recommendations:

(a) Complaints relating to allegations of torture by public officials under the previous regime should be fully and impartially investigated, the offenders prosecuted and the victims compensated. The results of such investigations should be made public;

(b) Full cooperation should be extended to ICTY, including through apprehending and transferring those persons who have been indicted and remain at large, as well as granting the Tribunal full access to requested documents and potential witnesses;

(c) The Commission for Truth and Reconciliation should be empowered to investigate all allegations of torture committed under the previous regime, make its findings public and recommend remedial action, including the prosecution of individuals, where appropriate. The Commission should be given, as necessary, the authority and the means to fulfil its mandate as soon as possible;

(d) The law should ensure that safeguards are in place to prevent torture of all detainees in police custody, whether charged with serious crimes or other offences, and to enable them to notify their families and to have access to a doctor and legal counsel of their choice;

(e) The State party should fully ensure the independence of the judiciary and the procuracy;

(f) The State party should take such measures as are necessary to ensure that ethnic and religious minorities are not mistreated by law enforcement personnel because of discrimination;

(g) A system of inspection of the conditions of imprisonment by independent experts should be established. Visits to prisons by NGOs should continue to be allowed;

(h) The crime of torture, as defined in the Convention, should be incorporated into the domestic law. The State party is reminded that torture is considered an international crime under customary international law, as well as under the Convention. No statute of limitations should apply to torture or any other international crime. In parallel with this the right to fair and adequate compensation and rehabilitation should be introduced, as laid out in the Convention;

(i) Under article 12 of the Convention, prosecutors and judges should investigate allegations of torture whenever they come to their attention, whether or not the victim has filed a formal complaint. In particular, every investigating judge, on learning from a detainee's statement that he or she has been subjected to torture, should initiate promptly an effective investigation into the matter;

(j) In the light of what appears to be a culture of impunity, investigation of cases of torture should be prompt, impartial and effective. It should include a medical examination carried out in accordance with the Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(k) Law enforcement personnel should have at their disposal all modern methods and equipment, as well as the professional training necessary to conduct effective and fair criminal investigations;

(l) All law enforcement officers should be trained in international standards relating to the custody and treatment of detainees, in accordance with the Convention and the United Nations Code of Conduct for Law Enforcement Officials;

(m) Medical examinations of all detainees should be carried out in all prisons within 24 hours of the time of detention. Any medical examination of a person detained should contain: (i) an account of statements made by the person concerned which are relevant to the medical examination, including his/her description of his/her state of health and any allegations of ill-treatment; (ii) an account of objective medical findings based on a thorough examination; (iii) the doctor's conclusion in the light of (i) and (ii). Furthermore, the result of the medical examination referred to above should be made available to the prisoner concerned and his/her lawyer;

(n) Judges, prosecutors and lawyers should be made fully aware of Serbia and Montenegro's international obligations in the field of human rights, particularly those enshrined in the Convention;

(o) The State party should establish an independent mechanism to investigate all human rights abuses, whenever they occur, that are brought to its attention;

(p) Persons alleged to have committed acts of torture should be suspended from official duties during the investigation of such allegations. Those found guilty should be dismissed from public service in addition to any other punishment;

(q) Measures should be taken to ensure that the mechanisms of internal oversight of the police function promptly and are independent and effective. An independent complaints authority with wide powers of oversight and intervention should be created within the police force;

(r) The State party should devise appropriate schemes for the compensation of victims of torture;

(s) The State party should develop official programmes for the rehabilitation of victims of torture. Thus far, only private institutions have developed such programmes;

(t) The State party should urge the Republic of Montenegro to adopt those guarantees contained in the new Code of Criminal Procedure that are relevant for the prevention of torture and ill-treatment.

VI. ADOPTION OF THE REPORT BY THE COMMITTEE AND TRANSMISSION TO THE STATE PARTY

214. At its twenty-ninth session, the Committee adopted the report on its inquiry and decided to transmit it to the State party, in accordance with article 20, paragraph 4, of the Convention. The Committee invited the State party, under rule 83, paragraph 2, of its rules of procedure, to inform it of the action taken in response to its conclusions and recommendations.

VII. SUMMARY OF THE REPLY FROM THE STATE PARTY

215. On 13 October 2003 the State party informed the Committee that its recommendations were very important in the context of the promotion of human rights to be conducted under the programmes of technical assistance to be provided by the Office of the High Commissioner for Human Rights and on the basis of the memorandum of understanding signed by the Ministry for Foreign Affairs of Serbia and Montenegro and the Office of the High Commissioner.

Safeguards against torture and other forms of inadmissible punishment

216. The Charter on Human and Minority Rights and Civil Liberties, published in the Official Gazette of the State Union No. 6/2003, provides in its article 12 not only for the prohibition of torture, but also for an explicit prohibition of inhuman or degrading treatment or punishment. In this sense, it constitutes a step forward with respect to the Constitution of the Federal Republic of Yugoslavia and the Constitutions of the Republics of Serbia and Montenegro.

217. The Basic Criminal Code of Serbia and Montenegro and the criminal codes of the member States incriminate unlawful arrest, extraction of statements and maltreatment in the performance of duty. At the time of the adoption of the amendments to the Criminal Code of the Federal Republic of Yugoslavia (now the Basic Criminal Code) in 2001 it was considered that the international obligations under the Convention were incorporated in articles 190 and 191, as well as in articles 65 and 66 of the Criminal Code of the Republic of Serbia and articles 47 and 48 of the Criminal Code of the Republic of Montenegro. Furthermore, article 12 of the 2001 Code of Criminal Procedure states that any violence against an arrested person and a person whose freedom is limited, as well as any extraction of confession or any other statement from an accused or any other person participating in the proceedings are prohibited and punishable. Other provisions of the Code regarding interrogation, prohibition of the use of force, the obligation of the court not to take into account statements obtained under torture and to remove from the case records statements obtained in contravention of the prohibitions, etc. are also referred to.

218. The laws of the member States concerning the enforcement of criminal sanctions contain no absolute prohibition of torture and other similar treatment. Nonetheless, they provide for human treatment of convicted persons. The member States have also taken measures to reform their legislation in order to guarantee the principle of the independence of the judiciary with respect to the executive. In the Republic of Serbia, the Law on Judges was amended in March 2003, aligning it with international standards. It is expected that the Criminal Code will be amended soon to include the criminal offence of torture.

219. The Government of the Republic of Montenegro set up a working group to draft a Criminal Law, a Law on Criminal Procedure and a Law on the State Prosecutor. It is envisaged that the criminal offence of torture will be incorporated in the Criminal Law. The Code of Criminal Procedure is expected to provide for the verification of suspects' allegations during pre-trial and investigation relative to torture and other inhuman treatment and punishment.

Charges and trials in the period 1992-2002 in the cases involving torture and maltreatment

220. From 1 January 1992 to 30 September 2002, the Ministry of the Interior of the Republic of Serbia brought 32 charges against 43 police officials on suspicion of having committed 21 criminal offences of maltreatment, 6 offences of unlawful arrest, 3 offences of coercion to sexual intercourse, 3 offences of unnatural carnal knowledge through the abuse of duty and extraction of statement and 1 offence of carnal act in connection with the criminal offence of coercion to sexual intercourse or unnatural carnal knowledge through the abuse of duty. The greatest number of charges was brought in 2001 and 2002.

221. Between 1 January 2000 and 31 October 2002, citizens lodged 4,625 complaints against police conduct; 523 of them were considered founded and, as a result, disciplinary action was taken against 158 officers for serious breaches of duty and against 111 officers for minor breaches of duty. Pending completion of the proceedings, 32 officers were removed. Ten criminal and 14 minor offence charges were brought, while 4 officers had their employment contract terminated by agreement. It was established that 2,929 complaints were unfounded, while 1,173 are being investigated. The greatest number of processed cases (32 criminal charges against 43 officers) involved improper and/or excessive use of force related to the use of means of coercion. Three persons died, while five sustained serious injuries in those incidents. Upon completion of the proceedings, 12 officers were sentenced to prison terms from 80 days to 6 years.

222. Disciplinary action was taken against 32 officers, 4 officers were dismissed, 10 were fined and 5 were given another assignment. Proceedings against two officers were dropped, five were acquitted and proceedings against six officers are pending.

223. In addition to legal measures taken ex officio by the Ministry of the Interior, 1,076 charges were pressed by citizens directly to the Public Prosecutor against 1,578 officers, most often because of the criminal offence of maltreatment in the line of duty (930), followed by extraction of statement (124) and unlawful arrest. The prosecution of most of the charges was discontinued, as they were found baseless.

224. In ruling on compensation of victims, the courts have begun to apply the Convention against Torture directly.

225. In Montenegro disciplinary actions were taken against 258 police officers in the period from 1 July 2001 to 1 September 2002.[19] Lately, attention has been focused on the regulation and limitation of police powers, including the use of force and firearms, arrest, treatment of persons in detention and the appointment of defence counsel upon first interrogation while in custody.

226. Concerning the recommendation of the Committee against Torture on the case of the Roma from Danilovgrad, the Government of Montenegro authorized the State Prosecutor to reach a court settlement to compensate the victims for material and other damage in the amount of 985 dinars.

Safeguards against torture of convicted and detained persons

227. In Serbia convicted and detained persons are allowed to submit complaints to the Director of the Penal Sanctions Execution Department and its organizational unit, the Surveillance Service.

228. Each institution is routinely surveyed once a year. Besides internal surveillance, delegates of the International Committee of the Red Cross visit penitentiary facilities. Between 1999 and December 2002 there were 215 such visits.

229. A long period of economic hardship in the country has dramatically affected the functioning of institutions for the execution of penal sanctions. Over the past two years, efforts have been made to improve the financial situation of prison officers and their incentives for work. As a result, the treatment of convicted persons has improved too. Efforts have also been made to ensure better detention conditions.

Measures taken to train law enforcement officials

230. Police officers in both union member States undergo training to prevent torture. In the Republic of Serbia new laws on police and police training are being prepared and are expected to be ready for adoption in the autumn of 2003. The Ministry of the Interior has decided to create the post of Inspector General who will ensure that police procedures are in conformity with the law. Officers of the Ministry of the Interior are made aware of human rights instruments, particularly of the prohibition of torture, humanitarian law and the Code of Conduct for Law Enforcement Officials in the training received at secondary and higher police schools and Police College, as well as seminars.

231. In the Republic of Montenegro, a new draft Police Law has been submitted to Parliament. This law promotes a new concept of public administration and its relationship with the public that implies full transparency, openness and cooperation. Furthermore, a Code of Conduct is being drawn up. In 2003, a number of conferences and seminars on human rights and policing have been held. With the assistance of HLC, a specialized course in international humanitarian law was held to educate judges, prosecutors, practising lawyers and police detective inspectors. Seminars devoted to the role of community policing also took place.

Cooperation with ICTY

232. Serbia and Montenegro attaches great importance to its cooperation with the Tribunal, which is conducted under the Law on Cooperation with ICTY. Pursuant to that law, a National Cooperation Council was established. The Council developed a step-by-step procedural process of cooperation. Cooperation is evidenced in the transfer of indictees, submission of documents, assistance in hearing witnesses and suspected persons, proceedings before national courts and the execution of protective measures. To date, 9 indicted persons were arrested and handed over to the Tribunal and 12 who were resident in the country voluntarily surrendered.

233. ICTY has forwarded to the authorities 17 warrants for the arrest of other indictees, including Radovan Karadzic, former Bosnian Serb leader, General Ratko Mladic, former Bosnian Serb commander, Vladimir Kovacevic, former member of the armed forces of Serbia and Montenegro, as well as 14 Bosnian Serb army soldiers. Most of these have wanted circulars issued on them, whereas two of them will have them issued fairly soon. From early 2001 to May 2003 Serbia and Montenegro met 99 requests by the Office of the Tribunal's Prosecutor (OTP) for submission of documents. Only in eight cases was OTP told that its request could not be met or that the requested documents did not exist. Additionally, 14 requests were met partially by submitting part of the requested documents.

234. As far as witnesses are concerned, this aspect of cooperation consists of finding, notifying and serving hearing papers or waivers for witnesses to testify on classified or privileged information. Between the beginning of 2001 and early May 2003, 115 requests were made by OTP or the Trials Chamber; in only 10 cases could the wanted persons not be identified. Serbia and Montenegro fulfils even other ICTY requests, such as those to set up meetings with government authorities, for ICTY investigators to be present during the exhumation of bodies, etc.

235. Apart from that, several other cases have been or are being tried by national courts. In July 2003 a law was passed dealing with the organization and competence of government authorities in proceedings against perpetrators of war crimes, including those covered by article 5 of the ICTY Statute. Under this law, the authorities of the Republic of Serbia have the authority to prosecute perpetrators of war crimes committed in the territory of the former Yugoslavia, whatever the nationality of either the perpetrator or the victim. The law provided for the establishment of the Office of a Special War Crimes Prosecutor, who has already been appointed. It also stipulates that the District Court in Belgrade is the court competent to decide on war crimes cases.

VIII. INFORMATION RECEIVED BY THE COMMITTEE AFTER ITS VISIT TO SERBIA AND MONTENEGRO

236. In the course of 2003 and the beginning of 2004, NGOs submitted information to the Committee alleging, inter alia, continuing police mistreatment of criminal suspects, failure by the State party to cooperate fully with ICTY, inadequate efforts to prosecute war criminals before domestic courts and an inadequate domestic system for bringing those responsible for war crimes to justice.

237. It was reported, in particular, that during the investigation of the assassination of Prime Minister Zoran Djindjic in March 2003, approximately 10,000 people were detained. They were held without their detention being authorized by a competent judicial body and without access to lawyers or family members, in some cases for up to two months under emergency regulations introduced after the assassination. The reports also suggested widespread ill-treatment of detainees, sometimes amounting to torture.

238. A number of individual cases allegedly occurred both in Serbia and in Montenegro. Some of them were not linked to the investigation of the assassination of the Prime Minister.

239. The Committee took note with concern of the above information.

IX. PUBLICATION OF THE SUMMARY ACCOUNT

240. At its thirty-first session, the Committee decided to invite the State party, in accordance with article 20, paragraph 5, of the Convention and rule 84 of its rules of procedure, to inform it of its observations regarding the possible publication of a summary account of the results of the inquiry in its annual report. On 1 March 2004 the State party replied that it agreed to such publication. At its thirty-second session, the Committee approved the summary account and decided to include it in the annual report.

Notes

[1] In its 2001 Study on Policing in the Federal Republic of Yugoslavia, OSCE recommended that a major and comprehensive review of detention facilities be undertaken (recommendation No. 48).

[2] Petar Antic, Abuses of Roma Rights in Serbia, Belgrade, 2001.

[3] This period was three days under the previous CPC.

[4] OSCE, op. cit., p. 24.

[5] Decree of the Government of the Republic of Serbia No. 05 broj 011-5742/74, of 23 September 1992.

[6] OSCE, op. cit., pp. 22-23.

[7] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 44* (A/54/44), paras. 35-52.

[8] Article 65 of the Serbian Criminal Code states:

> "(1) A person acting in an official capacity who uses force or threats or other proscribed or impermissible means with the intent of extracting a confession or other statement from a suspect, witness, expert witness or other person shall be punished with a term of imprisonment of three months to five years.

> "(2) If the extraction of a confession or other statement is accompanied by severe violence or if it results in consequences of a serious nature for a defendant in criminal proceedings, the perpetrator shall be punished with a minimum term of imprisonment of four years."

[9] Article 66 of the Serbian Criminal Code states: "A person acting in an official capacity who ill-treats, insults or threatens another in a manner degrading to his human dignity shall be punished with a term of imprisonment of three months to three years." Similar provisions to those contained in articles 65 and 66 are contained in articles 190 and 191 of the Criminal Code of Yugoslavia of 1976.

[10] According to OSCE, the Kosovo Verification Mission had frequent contacts with the Serbian authorities, police commanders and members of the judiciary about reports of torture and ill-treatment. "Generally, the OSCE-KVM was given assurances that all cases of torture and ill-treatment would be followed up and have the legally prescribed disciplinary and judicial consequences for the individual officer responsible. Such action ... would, however, only be possible if concrete allegations were made including the name of the officer and the time and location of the alleged offence. When the OSCE-KVM confronted the Chief Prosecutor of Pec and the President of the District Court of Pec with the question as to whether allegations of torture and ill-treatment by police would be actively investigated and prosecuted, the Prosecutor affirmed this, but said that he had never heard of such a case. Concrete action was rendered difficult for several reasons: first, Kosovo Albanians, or other citizens for that matter, who had become victims of torture or ill-treatment by the police, did not trust the State institutions to protect their rights and interests in pursuing legal redress and eventually receiving compensation. Second, in most cases, the identity of the offenders was unknown to the victims and the cooperation of regular police officers in an attempt to identify potential offenders was practically non-existent. And thirdly even if the individual, most often with the active support of the local OSCE-KVM office, ... filed a complaint with the local police commander, the consequences for the officer who had abused the complainant were insufficient to dissuade him from repeating the crime .... The near total absence of a response by the judicial authorities to these allegations only served to foster a sense of impunity within the police system, encouraging the continuation and escalation of such human rights violations". *Kosovo, As Seen, As Told*, p. 52.

[11] The State Prosecutor told the Committee members that he would provide them with statistics on complaints filed under article 65 of the Serbian Criminal Code. At the time of writing the present report, those statistics had not been provided.

[12] HLC provided the Committee with information on the case of E.M., a Muslim from Priboj in the Sandjak region who was reportedly taken to a local police station on 19 November 1999 and beaten for several hours while he was being asked about a person he did not know. On 29 December 1999 HLC filed a criminal complaint against unidentified officers of the Priboj police station, charging them with infliction of slight bodily harm. On two occasions HLC asked the municipal prosecutor to disclose the identity of the officers and bring criminal charges against them. The prosecutor responded that, in spite of two requests, the Priboj police authorities had not provided him with the information required to identify the alleged perpetrators.

[13] Under Serbian labour legislation, a person sentenced to a jail term of up to six months may be reinstated in the position he/she previously held.

[14] The case of V.K. is an example of this practice. V.K. was beaten on 13 November 1996 by officers of the Pancevo Police Department, as a result of which he suffered brain damage, a broken occipital bone, a broken jaw and nose and irreparably damaged hearing. On 12 December 1996 he filed a complaint accusing two police officers of inflicting severe bodily injuries. On 5 March 1997, the prosecutor dropped the charges, as a result of which V.K. undertook private prosecution. In the course of 2001, 12 hearings were scheduled but only 2 took place. One was postponed because judges were away for a conference and nine others because one or both defendants did not show up. (Helsinki Committee for Human Rights in Serbia, *Human Rights and Transition - Serbia 2001*, 2002, pp. 63-64.)

[15] According to article 95 of the Criminal Code of the Federal Republic of Yugoslavia, crimes punishable by a prison term of three to five years are subject to a statutory limitation of five years.

[16] As stated on several occasions, the Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors that the Government had difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice makes room for the use of torture may also add to its systematic nature.

[17] Created by decision of the President of the Republic dated 29 March 2001.

[18] Much of the information received concerns conduct that may not constitute torture under article 1 but instead may fall under article 16 of the Convention and, therefore, outside the scope of article 20.

[19] There is no indication of the types of conduct involved.

V. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

A. General information

241. Under article 22 of the Convention, individuals who claim to be victims of a violation by a State party of the provisions of the Convention may submit a complaint to the Committee against Torture for consideration, subject to the conditions laid down in that article. Fifty-six out of 136 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider complaints under article 22 of the Convention. The list of those States is contained in annex III. No complaint may be considered by the Committee if it concerns a State party to the Convention that has not recognized the Committee's competence under article 22.

242. Consideration of complaints under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents pertaining to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential.

243. Pursuant to rule 107 of the rules of procedure, with a view to reaching a decision on the admissibility of a complaint, the Committee, its working group, or a rapporteur designated under rules 98 or 106, paragraph 3, shall ascertain: that the individual claims to be a victim of a violation by the State party concerned of the provisions of the Convention; that the complaint is not an abuse of the Committee's process or manifestly unfounded; that it is not incompatible with the provisions of the Convention; that the same matter has not been and is not being examined under another procedure of international investigation or settlement; that the complainant has exhausted all available domestic remedies and that the time elapsed since the exhaustion of domestic remedies is not unreasonably prolonged as to render consideration of the claims unduly difficult for the Committee or the State party.

244. Pursuant to rule 109 of the rules of procedure, a complaint shall be transmitted as soon as possible after registration to the State party, requesting a written reply within six months. Unless the Committee, the working group or a rapporteur decide, because of the exceptional nature of the case, to request a reply only in respect of the question of admissibility, the State party shall include in its reply explanations or statements relating both to the admissibility and the merits of the complaint, as well as to any remedy that may have been provided. A State party may apply, within two months, for the complaint to be rejected as inadmissible. The Committee, or the Rapporteur for new complaints and interim measures, may agree or refuse to split consideration of admissibility from that of the merits. Following a separate decision on admissibility, the Committee sets the deadline for submissions on a case-by-case basis.

245. The Committee, its working group or rapporteur(s) may request the State party concerned or the complainant to submit additional written information, clarifications or observations, and shall indicate a time limit for their submission. Within such time limits as indicated by the Committee, its working group or rapporteur(s), the State party or the complainant may be afforded an opportunity to comment on any submission received from the other party. Non-receipt of submissions or comments should not generally delay the consideration of the complaint. If the State party or the complainant are unable to submit the information requested within set deadlines, they are urged to apply for an extension of the deadline. In the absence of

such a request, the Committee or its working group may decide to consider the admissibility and/or merits of the complaint on the basis of the information contained in the file. At its thirtieth session, the Committee decided to include a standard paragraph to that effect in any note verbale or letter of transmittal to the State party/complainant that sets a deadline for comments on submissions of the other party. This paragraph replaces the former practice of sending out reminders that resulted in delays in the examination of complaints in the past.

246. The Committee decides on a complaint in the light of all information made available to it by the complainant and the State party. The findings of the Committee are communicated to the parties (article 22, paragraph 7, of the Convention and rule 112 of the rules of procedure) and are made available to the general public. The text of the Committee's decisions declaring complaints inadmissible under article 22 of the Convention is also made public without disclosing the identity of the complainant, but identifying the State party concerned.

247. Pursuant to rule 115, paragraph 1, of its rules of procedure, the Committee may decide to include in its annual report a summary of the communications examined. The Committee shall also include in its annual report the text of its decisions under article 22, paragraph 7, of the Convention.

B. Interim measures of protection

248. Complainants frequently request preventive protection, particularly in cases concerning imminent expulsion or extradition, and invoke in this connection article 3 of the Convention. Pursuant to rule 108, paragraph 1, of the rules of procedure, at any time after the receipt of a complaint, the Committee, its working group, or the Rapporteur for new complaints and interim measures may transmit to the State party concerned a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violations. The State party shall be informed that such a request does not imply a determination of the admissibility or the merits of the complaint. The Rapporteur for new complaints and interim measures regularly monitors compliance with the Committee's requests for interim measures. The State party may inform the Committee that the reasons for the interim measures have lapsed or present arguments why the interim measures should be lifted. The Rapporteur, the Committee or its working group may withdraw the request for interim measures.

249. The Rapporteur for new complaints and interim measures has developed the working methods regarding the withdrawal of requests for interim measures. Where the circumstances suggest that a request for interim measures may be reviewed before the consideration of the merits, a standard sentence should be added to such a request, stating that the request is made on the basis of the information contained in the complainant's submission and may be reviewed, at the initiative of the State party, in the light of information and comments received from the State party and any further comments, if any, from the complainant.

250. Conversely, in a case registered during the reporting period, interim measures were initially denied to the complainants, in the absence of sufficient information which would have justified a request under rule 108, paragraph 1, of the rules of procedure. Subsequently, however, the Rapporteur for new complaints and interim measures requested the State party not to return the complainants to their country of origin, in the light of additional information provided by them.

251. During the period under review, the Rapporteur requested States parties to defer expulsion, deportation or extradition in a number of cases so as to allow the Committee to consider the complaints under the Committee's procedure. All States parties so requested acceded to the Committee's requests for deferral. In nine deportation/expulsion cases registered during the reporting period, the Rapporteur, after careful examination of the submissions, did not consider it necessary to request interim measures from the States parties concerned in order to avoid irreparable damage to the complainants upon return to their countries of origin.

C. Progress of work

252. At the time of adoption of the present report the Committee had registered 249 complaints with respect to 23 countries. Of them, 59 complaints had been discontinued and 44 had been declared inadmissible. The Committee had adopted final decisions on the merits with respect to 99 complaints and found violations of the Convention in 25 of them. Overall, 47 complaints remained pending for consideration.

253. At its thirty-first session, the Committee declared one complaint admissible, to be considered on the merits, and declared inadmissible complaint No. 236/2003 (*A.T.A. v. Switzerland*).

254. Also at its thirty-first session, the Committee adopted decisions on the merits in respect of complaints Nos. 153/2000 (*Z.T. v. Australia*), 186/2001 (*K.K. v. Switzerland*), 187/2001 (*Thabti v. Tunisia*), 188/2001 (*Abdelli v. Tunisia*), 189/2001 (*Ltaief v. Tunisia*), 199/2001 (*H.A. v. Sweden*), 203/2002 (*A.R. v. The Netherlands*), 209/2002 (*M.O. v. Denmark*), 210/2002 (*V.R. v. Denmark*), 213/2002 (*E.J.V.M. v. Sweden*), 215/2002 (*J.A.G.V. v. Sweden*) and 228/2003 (*T.M. v. Sweden*). The text of these decisions is reproduced in annex VII to the present report.

255. In its decisions on complaints Nos. 153/2000 (*Z.T. v. Australia*), 186/2001 (*K.K. v. Switzerland*), 203/2002 (*A.R. v. The Netherlands*), 209/2002 (*M.O. v. Denmark*), 210/2002 (*V.R. v. Denmark*), 213/2002 (*E.J.V.M. v. Sweden*) and 215/2002 (*J.A.G.V. v. Sweden*), the Committee considered that the complainants had not established that they would face a foreseeable, real and personal risk of being tortured upon return to their countries of origin. The Committee therefore concluded in each case that the removal of the complainants to those countries would not breach article 3 of the Convention.

256. In its decision on complaint No. 199/2001 (*H.A. v. Sweden*), the complainant claimed that her expulsion to Egypt would expose her to a risk of torture, given that her husband had been expelled to that country on grounds of his alleged involvement in terrorist activities. The Committee found that, in the light of assurances provided by the receiving State, Egypt, concerning the complainant's and her husband's treatment after return, as well as the State party's own undertaking regularly to monitor the complainant's situation by visits of its embassy or consular staff, the complainant had not made a case that her expulsion would violate article 3 of the Convention.

257. In its decision on complaint No. 228/2003 (*T.M. v. Sweden*), the Committee found that the complainant's expulsion to Bangladesh, where he had allegedly been tortured as a member of an illegal political party, did not amount to a violation of article 3 of the Convention, given the fact that six years had lapsed since the alleged torture had taken place and that the complainant's own political party now was part of the Government in Bangladesh. Furthermore, the

Committee declared inadmissible *ratione materiae* the claim that the complainant's removal would expose him to possible ill-treatment in Bangladesh, in violation of articles 2 and 16 of the Convention, and observed that the scope of the non-refoulement obligation in article 3 does not extend to situations of ill-treatment envisaged in article 16. It also considered that the complainant had not sufficiently substantiated, for purposes of admissibility, that his prompt removal from Sweden, despite mental health problems, violated article 16 of the Convention; in this respect, it considered that the aggravation of an individual's physical or mental health through deportation is generally insufficient to amount to degrading treatment within the meaning of this provision, and that the complainant had failed to demonstrate that appropriate medical care was unavailable in Bangladesh.

258. In its decisions on complaints Nos. 187/2001 (*Thabti v. Tunisia*), 188/2001 (*Abdelli v. Tunisia*) and 189/2001 (*Ltaief v. Tunisia*), the Committee considered that the State party's failure to investigate the complainants' detailed torture allegations made before the judicial authorities, in connection with their trials for participation in an attempted coup d'état or support of an illegal organization, amounted to a violation of articles 12 and 13 of the Convention. It emphasized that the obligation, in article 13, promptly and impartially to examine such allegations, including by a medical examination immediately following allegations of abuse, is not subject to the formal lodging of a complaint of torture under national procedures or an express statement of intent to that effect. It suffices for the alleged victim simply to bring the facts to the attention of the State party.

259. At its thirty-second session, the Committee declared one complaint admissible, to be considered on the merits, and declared inadmissible complaints Nos. 202/2002 (*H.J. v. Denmark*), 225/2003 (*R.S. v. Denmark*), 229/2003 (*H.S.V. v. Sweden*) and 243/2004 (*S.A. v. Sweden*).

260. Also at its thirty-second session, the Committee adopted decisions on the merits in respect of complaints Nos. 135/1999 (*S.G. v. The Netherlands*), 148/1999 (*A.K. v. Australia*), 182/2001 (*A.I. v. Switzerland*), 183/2001 (*B.S.S. v. Canada*), 196/2002 (*M.A.M. v. Sweden*) and 214/2002 (*M.A.K. v. Germany*). The text of these decisions is reproduced in annex VII to the present report.

261. In its decisions on complaints Nos. 135/1999 (*S.G. v. The Netherlands*), 148/1999 (*A.K. v. Australia*), 182/2001 (*A.I. v. Switzerland*) and 196/2002 (*M.A.M. v. Sweden*), the Committee considered that the complainants had failed to demonstrate that they would run a foreseeable, real and personal risk of being subjected to torture upon return to their countries of origin. The Committee therefore concluded, in each case, that the removal of the complainants to those countries would not constitute a violation of article 3 of the Convention.

262. In its decision on complaint No. 183/2001 (*B.S.S. v. Canada*), the Committee found that the complainant's deportation to India, 13 years after he had allegedly been tortured by the Punjabi police, would not violate article 3 of the Convention, given that the evidence submitted by the complainant exclusively referred to his risk of being tortured in Punjab. It considered that the complainant had failed to substantiate that he would be unable to lead a life free of torture in another part of India and argued that, although resettlement outside Punjab would constitute a hardship for the complainant, the mere fact that he may not be able to return to his family and his home village would not as such amount to torture within the meaning of articles 1 and 3 of the Convention. The Committee declared inadmissible the complainant's claim that his forcible

return to India would subject him to severe emotional trauma, thereby violating article 16 of the Convention, and observed that, although his deportation may give rise to subjective fears, it would not amount to cruel, inhuman or degrading treatment within the meaning of article 16.

263. In case No. 214/2002 (*M.A.K. v. Germany*), the complainant, a Turkish national of Kurdish origin, had applied for the reopening of asylum proceedings in Germany after his initial asylum application had been rejected by final decision of a German court. Although domestic judicial proceedings in relation to his application to reopen asylum proceedings were still pending, the Committee declared the complaint admissible, in the light of the fact that the complainant's simultaneous application for an interim order staying his imminent deportation had been dismissed by final decision, and that the main proceedings had no suspensive effect. However, the Committee found that the complainant's deportation to Turkey would not violate article 3 of the Convention, since he had failed to corroborate his claimed participation in a PKK training camp in the Netherlands, and because his participation in a highway blockade organized by PKK sympathizers in 1994, for which he had been sentenced to a suspended prison term, did not amount to the type of activity which would make him particularly vulnerable to the risk of being tortured upon return to Turkey. At the same time, the Committee welcomed the State party's offer to monitor the complainant's situation following his return to Turkey and requested it to keep the Committee informed about his situation.

D. Follow-up activities

264. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. The Committee decided that the Rapporteur shall engage, inter alia, in the following activities:

(a) Monitoring compliance with the Committee's decisions by writing to States parties to inquire about measures adopted pursuant to the Committee's decisions;

(b) Recommending to the Committee appropriate action in situations of non-response by States, and upon the receipt of letters from complainants concerning States' failure to implement the Committee's decisions;

(c) Meeting with representatives of the States parties to encourage compliance with the Committee's decisions and to determine whether advisory services or technical assistance by OHCHR would be appropriate or desirable;

(d) Conducting, with the approval of the Committee, follow-up visits to States parties;

(e) Preparing periodic reports to the Committee on his/her activities.

265. The Rapporteur on follow-up submitted the first written report to the Committee at its thirty-second session. The report contained information received up to 3 May 2004 from either the complainants or the States parties on the issue of follow-up to a number of decisions in which the Committee found violations of the Convention. The following country-by-country list contains a brief summary of such decisions and the follow-up information received.

Serbia and Montenegro

266. *Hajrizi Dzemajl et al. v. Yugoslavia*, case No. 161/2000, decision adopted on 21 November 2002. The case concerned the burning and destruction of houses of Roma by non-Roma in April 1995. The Committee found violations of articles 16, paragraph 1, 12 and 13 of the Convention and recommended that a proper investigation into the facts be conducted, that the persons responsible for those acts be prosecuted and punished and that the complainants be provided with redress, including fair and adequate compensation. The Committee asked the State party to inform it, within 90 days from the date of the transmittal of the decision, i.e. by 13 March 2003, of the steps taken in response to its observations.

267. On 4 August and 24 September 2003, the State party informed the Committee that it intended to provide compensation of 985,000 euros to the complainants. On 2 February 2004, the Rapporteur wrote to the State party expressing satisfaction with the State party's intention to provide compensation but recalled that, in order to fully implement the decision, the State party was also requested to prosecute the persons responsible and asked to receive further information in this regard. The same request was made to a representative of the State party with whom the Rapporteur met on 30 April 2004. On 6 May 2004, the State party responded that it had provided compensation to the complainants and therefore all obligations arising from the Committee's decision had been fulfilled by the Government of Montenegro.

268. *Ristic v. Yugoslavia*, case No. 113/1998, decision adopted on 11 May 2001. This case concerned the failure to investigate allegations of torture in circumstances where the cause of death of the victim was unclear. The Committee found violations of articles 12 and 13 of the Convention and recommended that appropriate remedies be adopted. After meeting with a representative of the State party on 30 April 2004, the Rapporteur was informed, on 3 May 2004, that the Office of the Public Prosecutor in Sabac had ordered the exhumation of the body of Milan Ristic and a new post-mortem, for the purpose of ascertaining whether any new evidence would justify a retrial. The exhumation was carried out on 20 April 2004 and the results would be communicated to the Committee once completed.

Sweden

269. *Chedli Ben Ahmed Karoui v. Sweden*, case No. 185/2001, decision adopted on 8 May 2002. The case concerned the risk of being subjected to torture if the complainant were returned to Tunisia. The Committee found a violation of article 3 of the Convention. On 11 December 2002 the State party informed the Committee that a new application for, inter alia, a residence permit had been lodged with the Aliens Appeals Board by the complainant and his family, and that the Committee's decision had been invoked in support of the application. On 4 June 2002, the Board revoked the expulsion decisions regarding the complainant and his family, who were subsequently granted permanent residence permits.

Tunisia

270. *M'Barek v. Tunisia*, case No. 60/1996, decision adopted on 10 November 1999. The case concerned the failure to investigate allegations of torture in circumstances where the cause of death of the victim was unclear. The Committee found violations of articles 12 and 13 of the

Convention and recommended that the State party informs it within 90 days of the steps taken in response to its observations. In a letter dated 15 April 2002, the State party challenged the decision and the facts as interpreted in the Committee's decision.

271. *Thabti v. Tunisia*, case No. 187/2001, *Abdelli v. Tunisia*, case No. 188/2001, *Ltaief v. Tunisia*, case No. 189/2001, decisions adopted on 14 November 2003. The cases concerned the torture allegedly inflicted on the complainants. The Committee found violations of articles 12 and 13 of the Convention and recommended that the State party conduct an investigation into the allegations and inform it within 90 days of the steps taken.

272. In its response dated 26 March 2004, the State party challenged the Committee's decision and reiterated the arguments presented during the examination of the complaint. It alleged that the complaint was an abuse of process, that the authors failed to exhaust domestic remedies and that the motives of the NGO representing the authors were not bona fide. Furthermore, the State party requested that the Committee "reconsider" the complaint.

VI. FUTURE MEETINGS OF THE COMMITTEE

273. Following the request of one of its members, the Committee decided that the dates of its thirty-fifth session would be 14 to 25 November 2005, instead of 7 to 18 November 2005 as indicated in its previous annual report.

VII. ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE ON ITS ACTIVITIES

274. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly. Since the Committee holds its second regular session of each calendar year in late November, which coincides with the regular sessions of the General Assembly, it adopts its annual report at the end of its spring session, for appropriate transmission to the General Assembly during the same calendar year. Accordingly, at its 619th meeting, held on 21 May 2004, the Committee considered and unanimously adopted the report on its activities at the thirty-first and thirty-second sessions.

Annex I

STATES THAT HAVE SIGNED, RATIFIED OR ACCEDED TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, AS AT 21 MAY 2004

State	Date of signature	Date of receipt of the instrument of ratification or accession
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1984[a]
Algeria	26 November 1985	12 September 1989
Antigua and Barbuda		19 July 1993[a]
Argentina	4 February 1985	24 September 1986
Armenia		13 September 1993[a]
Australia	10 December 1985	8 August 1989
Austria	14 March 1985	29 July 1987
Azerbaijan		16 August 1996[a]
Bahrain		6 March 1998[a]
Bangladesh		5 October 1998[a]
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	25 June 1999
Belize		17 March 1986[a]
Benin		12 March 1992[a]
Bolivia	4 February 1985	12 April 1999
Bosnia and Herzegovina		6 March 1992[b]
Botswana	8 September 2000	8 September 2000
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986
Burkina Faso		4 January 1999[a]
Burundi		18 February 1993[a]
Cambodia		15 October 1992[a]
Cameroon		19 December 1986[a]
Canada	23 August 1985	24 June 1987
Cape Verde		4 June 1992[a]
Chad		9 June 1995[a]
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987

State	Date of signature	Date of receipt of the instrument of ratification or accession
Comoros	22 September 2000	
Congo		30 July 2003[a]
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995[a]
Croatia		8 October 1991[b]
Cuba	27 January 1986	17 May 1995
Cyprus	9 October 1985	18 July 1991
Czech Republic		1 January 1993[b]
Democratic Republic of the Congo		18 March 1996[a]
Denmark	4 February 1985	27 May 1987
Djibouti		5 November 2002[a]
Dominican Republic	4 February 1985	
Ecuador	4 February 1985	30 March 1988
Egypt		25 June 1986[a]
El Salvador		17 June 1996[a]
Equatorial Guinea		8 October 2002[a]
Estonia		21 October 1991[a]
Ethiopia		14 March 1994[a]
Finland	4 February 1985	30 August 1989
France	4 February 1985	18 February 1986
Gabon	21 January 1986	8 September 2000
Gambia	23 October 1985	
Georgia		26 October 1994[a]
Germany	13 October 1986	1 October 1990
Ghana	7 September 2000	7 September 2000[a]
Greece	4 February 1985	6 October 1988
Guatemala		5 January 1990[a]
Guinea	30 May 1986	10 October 1989
Guinea-Bissau	12 September 2000	
Guyana	25 January 1988	19 May 1988
Holy See		26 June 2002[a]
Honduras	28 November 1986	5 December 1996[a]
Hungary	4 February 1985	15 April 1987
Iceland		23 October 1996
India	14 October 1997	

State	Date of signature	Date of receipt of the instrument of ratificatio or accession
Indonesia	23 October 1985	28 October 1998
Ireland	28 September 1992	11 April 2002
Israel	22 October 1986	3 October 1991
Italy	4 February 1985	12 January 1989
Japan		29 June 1999[a]
Jordan		13 November 1991[a]
Kazakhstan		26 August 1998
Kenya		21 February 1997[a]
Kuwait		8 March 1996[a]
Kyrgyzstan		5 September 1997[a]
Latvia		14 April 1992[a]
Lebanon		5 October 2000[a]
Lesotho		12 November 2001[a]
Libyan Arab Jamahiriya		16 May 1989[a]
Liechtenstein	27 June 1985	2 November 1990
Lithuania		1 February 1996[a]
Luxembourg	22 February 1985	29 September 1987
Madagascar	1 October 2001	
Malawi		11 June 1996[a]
Maldives		20 April 2004[a]
Mali		26 February 1999[a]
Malta		13 September 1990[a]
Mauritius		9 December 1992[a]
Mexico	18 March 1985	23 January 1986
Monaco		6 December 1991[a]
Mongolia		24 January 2002
Morocco	8 January 1986	21 June 1993
Mozambique		14 September 1999[a]
Namibia		28 November 1994[a]
Nauru	12 November 2001	
Nepal		14 May 1991[a]
Netherlands	4 February 1985	21 December 1988
New Zealand	14 January 1986	10 December 1989
Nicaragua	15 April 1985	
Niger		5 October 1998[a]

State	Date of signature	Date of receipt of the instrument of ratification or accession
Nigeria	28 July 1988	28 June 2001
Norway	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986[a]
Poland	13 January 1986	26 July 1989
Portugal	4 February 1985	9 February 1989
Qatar		11 January 2000[a]
Republic of Korea		9 January 1995[a]
Republic of Moldova		28 November 1995[a]
Romania		18 December 1990[a]
Russian Federation	10 December 1985	3 March 1987
Saint Vincent and the Grenadines		1 August 2001[a]
Sao Tome and Principe	6 September 2000	
Saudi Arabia		23 September 1997[a]
Senegal	4 February 1985	21 August 1986
Serbia and Montenegro		12 March 2001[b]
Seychelles	18 March 1985	5 May 1992[a]
Sierra Leone		25 April 2001
Slovakia		29 May 1993[b]
Slovenia		16 July 1993[a]
Somalia		24 January 1990[a]
South Africa	29 January 1993	10 December 1998
Spain	4 February 1985	21 October 1987
Sri Lanka		3 January 1994[a]
Sudan	4 June 1986	
Swaziland		26 March 2004[a]
Sweden	4 February 1985	8 January 1986
Switzerland	4 February 1985	2 December 1986
Tajikistan		11 January 1995[a]
The former Yugoslav Republic of Macedonia		12 December 1994[b]
Timor Leste		16 April 2003
Togo	25 March 1987	18 November 1987
Tunisia	26 August 1987	23 September 1988

State	Date of signature	Date of receipt of the instrument of ratification or accession
Turkey	25 January 1988	2 August 1988
Turkmenistan		25 June 1999[a]
Uganda		3 November 1986[a]
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland	15 March 1985	8 December 1988
United States of America	18 April 1988	21 October 1994
Uruguay	4 February 1985	24 October 1986
Uzbekistan		28 September 1995[a]
Venezuela	15 February 1985	29 July 1991
Yemen		5 November 1991[a]
Zambia		7 October 1998[a]

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[a] Accession.

[b] Succession.

Annex II

STATES PARTIES THAT HAVE DECLARED, AT THE TIME OF RATIFICATION OR ACCESSION, THAT THEY DO NOT RECOGNIZE THE COMPETENCE OF THE COMMITTEE PROVIDED FOR BY ARTICLE 20 OF THE CONVENTION, AS AT 21 MAY 2004[a]

Afghanistan

China

Equatorial Guinea

Israel

Kuwait

Morocco

Saudi Arabia

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[a] Total of seven States parties.

Annex III

STATES PARTIES THAT HAVE MADE THE DECLARATIONS PROVIDED FOR IN ARTICLES 21 AND 22 OF THE CONVENTION, AS AT 21 MAY 2004[a]

State party	Date of entry into force
Algeria	12 October 1989
Argentina	26 June 1987
Australia	29 January 1993
Austria	28 August 1987
Belgium	25 July 1999
Bosnia and Herzegovina	4 June 2003
Bulgaria	12 June 1993
Cameroon	11 November 2000
Canada	24 July 1987
Chile	15 March 2004
Costa Rica	27 February 2002
Croatia	8 October 1991
Cyprus	8 April 1993
Czech Republic	3 September 1996
Denmark	26 June 1987
Ecuador	29 April 1988
Finland	29 September 1989
France	26 June 1987
Germany	19 October 2001
Ghana	7 October 2000
Greece	5 November 1988
Hungary	26 June 1987
Iceland	22 November 1996
Ireland	11 April 2002
Italy	11 February 1989
Liechtenstein	2 December 1990
Luxembourg	29 October 1987
Malta	13 October 1990
Monaco	6 January 1992
Netherlands	20 January 1989
New Zealand	9 January 1990
Norway	26 June 1987
Paraguay	29 May 2002
Peru	7 July 1988
Poland	12 June 1993

State party	Date of entry into force
Portugal	11 March 1989
Russian Federation	1 October 1991
Senegal	16 October 1996
Serbia and Montenegro	12 March 2001
Slovakia	17 April 1995
Slovenia	16 July 1993
South Africa	10 December 1998
Spain	20 November 1987
Sweden	26 June 1987
Switzerland	26 June 1987
Togo	18 December 1987
Tunisia	23 October 1988
Turkey	1 September 1988
Uruguay	26 June 1987
Ukraine	12 September 2003
Venezuela	26 April 1994

States parties that have only made the declaration provided for in article 21 of the Convention, as at 21 May 2004

Japan	29 June 1999
Uganda	19 December 2001
United Kingdom of Great Britain and Northern Ireland	8 December 1988
United States of America	21 October 1994

States parties that have only made the declaration provided for in article 22 of the Convention, as at 21 May 2004[b]

Burundi	10 June 2003
Azerbaijan	4 February 2002
Guatemala	25 September 2003
Mexico	15 March 2002
Seychelles	6 August 2001

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[a] Total of 51 States parties.

[b] A total of 56 States parties have made the declaration under article 22.

Annex IV

MEMBERSHIP OF THE COMMITTEE AGAINST TORTURE IN 2004

Name of Member	Country of nationality	Term expires on 31 December
Mr. Guibril CAMARA	Senegal	2007
Mr. Sayed Kassem EL MASRY	Egypt	2005
Ms. Felice GAER	United States of America	2007
Mr. Claudio GROSSMAN	Chile	2007
Mr. Fernando MARIÑO	Spain	2005
Mr. Andreas MAVROMMATIS	Cyprus	2007
Mr. Julio PRADO VALLEJO	Ecuador	2007
Mr. Ole Vedel RASMUSSEN	Denmark	2005
Mr. Alexander M. YAKOVLEV	Russian Federation	2005
Mr. YU Mengjia	China	2005

Annex V

COUNTRY RAPPORTEURS AND ALTERNATE RAPPORTEURS FOR THE REPORTS OF STATES PARTIES CONSIDERED BY THE COMMITTEE AT ITS THIRTY-FIRST AND THIRTY-SECOND SESSIONS

A. Thirty-first session

Report	Rapporteur	Alternate
Cameroon: third periodic report (CAT/C/34/Add.17)	Mr. Camara	Mr. Yu
Colombia: third periodic report (CAT/C/39/Add.4)	Mr. Mariño	Mr. Rasmussen
Latvia: initial report (CAT/C/21/Add.4)	Mr. El Masry	Mr. Rasmussen
Lithuania: initial report (CAT/C/37/Add.5)	Mr. Yakovlev	Ms. Gaer
Morocco: third periodic report (CAT/C/66/Add.1)	Mr. Camara	Ms. Gaer
Yemen: initial report (CAT/C/16/Add.10)	Mr. Burns	Mr. Mavrommatis

B. Thirty-second session

Report	Rapporteur	Alternate
Bulgaria: third periodic report (CAT/C/34/Add.16)	Ms. Gaer	Mr. Yakovlev
Chile: third periodic report (CAT/C/39/Add.5/Corr.1)*	Ms. Gaer	Mr. Rasmussen
Croatia: third periodic report (CAT/C/54/Add.3)	Mr. Rasmussen	Mr. Yakovlev

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* Document CAT/C/39/Add.14 (Third periodic report of Chile), of 28 October 2002, should have the symbol CAT/C/39/Add.5. Please note that this corrigendum amends only the document symbol.

Report	Rapporteur	Alternate
Czech Republic: third periodic report (CAT/C/60/Add.1)	Mr. El Masry	Mr. Grossman
Germany: third periodic report (CAT/C/49/Add.4)	Mr. Yu	Mr. Grossman
Monaco: second periodic report (CAT/C/38/Add.2)	Mr. Camara	Mr. Mariño
New Zealand: third periodic report (CAT/C/49/Add.3)	Mr. Mavrommatis	Mr. El Masry

Annex VI

WORKING METHODS OF THE COMMITTEE AGAINST TORTURE WHEN CONSIDERING REPORTS UNDER ARTICLE 19 OF THE CONVENTION

Introduction

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted in 1984 and entered into force on 26 June 1987. At its first meeting, held in Geneva in April 1988, the Committee adopted its rules of procedure and defined its working methods, in conformity with article 18 of the Convention. The increasing number of ratifications and the practice developed in the performance of its functions has required of the Committee to keep its rules of procedure and working methods under constant review, in order to enhance effectiveness and coordination. The current rules of procedure were last amended in 2002.[a]

2. Under article 19 of the Convention each State party must submit to the Committee reports on the measures taken to implement its obligations under the Convention. The initial report must be submitted within one year after the entry into force of the Convention for the State concerned. Thereafter, reports on subsequent developments taking place in connection with the Convention (periodic reports) must be submitted every four years.

Guidelines for reporting by States parties

3. The Committee has adopted reporting guidelines to assist States parties in the preparation of initial and periodic reports.[b] The guidelines are kept under review in the light of the Committee's own experience and the efforts of harmonization being conducted by all human rights treaty monitoring bodies.

4. The Committee attaches great importance to the inclusion in State party reports of information related to the de facto implementation of the Convention as well as factors and difficulties affecting such implementation. The Committee also welcomes the involvement of national institutions for the promotion and protection of human rights and non-governmental organizations in the process of consultations leading to the preparation of reports by States parties.

Scheduling reports for examination and lists of issues

5. At each session the Committee selects, among the reports received, those to be examined at its following two sessions. In making the selection the Committee usually follows the chronological order of submission, while giving priority to initial reports over periodic ones. At the same time, the Committee appoints two of its members to act as rapporteurs for each country report. One member can act as rapporteur for more than one report during the same session.

6. At the session prior to the one at which a periodic report will be considered, the Committee draws up a list of issues to be transmitted to the State in question at least two months before the consideration of the report. Such list is prepared, inter alia, on the basis of the information contained in the report, the recommendations addressed by the Committee to the State in the past and information originating from non-governmental sources.

7. The lists of issues are intended to focus the dialogue with the States on matters of particular interest for the Committee. Replies to them are to be provided orally during the consideration of the report. The State party may, at its discretion, submit the responses also in writing for distribution to the Committee members two weeks prior to the date on which the report will be considered by the Committee. Written responses will not be translated. They will be made available to the public by inclusion on the OHCHR web site in the language of submission.

Consideration of reports of States parties

8. The Committee holds two sessions annually, a two-week session in November and a three-week session in May. Five to seven States parties are invited to present their reports at each session.

9. The consideration of a report usually takes the form of a dialogue between the delegation from the reporting State and the Committee. The aim of the dialogue is to enhance the Committee's understanding of the situation in the State party as it pertains to the Convention and to provide advice on how to improve the implementation of the Convention. Exceptionally, the Committee may consider a report in the absence of representatives of the State party when, after being notified, they fail to appear before the Committee and do not provide strong reasons.[c]

10. Two public meetings, an initial half-day morning meeting and another in the afternoon of the following day, are generally devoted to the consideration of a report. The first meeting begins with a presentation by the State party representatives in which they should make an introduction highlighting, inter alia, new developments since the submission of the report and respond to the list of issues previously sent by the Committee. Such presentation should not last more than 90 minutes. Afterwards, the country rapporteurs and other Committee members make comments and seek additional information related to issues they consider as requiring further clarification. They can also raise matters that had not been referred to in the initial list of issues.

11. It is the Committee's practice that individual members refrain from participating in any aspect of the consideration of the reports of the States parties of which they are nationals.

12. Press releases in English and French are issued immediately by the United Nations Information Service regarding the meetings at which a State party report is considered. Summary records are also issued during or after the closure of the session, in English or French.

13. The official languages of the Committee being English, French, Russian and Spanish, interpretation from and into these languages is provided during all official meetings. The State party reports and other relevant documents are also made available in these languages. State party reports submitted in Arabic or Chinese are issued as official documents also in the original language. Arabic and Chinese interpretation is made available when State representatives wish to use these languages.

Conclusions and recommendations

14. Following the consideration of each report the Committee proceeds to deliberate in a closed meeting, subsequent to which the country rapporteurs draft conclusions and recommendations. The drafts are then discussed and adopted in plenary, also in closed meeting. The conclusions and recommendations follow a standard format which consists of a brief introduction, followed by sections noting positive aspects, factors and difficulties impeding the implementation of the Convention (if any), subjects of concern to the Committee and recommendations.

15. Once adopted, the conclusions and recommendations are forwarded to the State party concerned and made public. They are also posted on the OHCHR web site. Finally, they are included in the annual report that the Committee submits to the General Assembly annually.

16. The State party may submit any comment it considers appropriate in reply to the conclusions and recommendations. If the State so requests, the Committee can make such comments public by issuing them as an official document.

Follow-up to conclusions and recommendations

17. The Committee may identify some of its recommendations regarding whose implementation it would like to receive information from the State party.[d] The Committee has appointed a rapporteur to follow up on the State party's compliance with these requests.

Strategies to encourage reporting by States parties

18. Twice a year the Committee issues a list of overdue reports. Such a list is also included in the Committee's annual report to the General Assembly. The Committee may also send to a State party a reminder concerning the submission of its report(s). Furthermore, the Committee has appointed two of its members to maintain contacts with representatives of non-reporting States in order to encourage the preparation and submission of reports.

19. Under rule 65 of its rules of procedure the Committee may, in appropriate cases, notify the defaulting State that it intends, on a date specified in the notification, to examine the measures taken by the State to protect or give effect to the rights recognized in the Convention and make such general comments as it deems appropriate in the circumstances.

Interaction with specialized agencies and bodies of the United Nations and non-governmental organizations in the examination of reports

20. Under rule 62 of its rules of procedure, the Committee invites United Nations specialized agencies and bodies, regional intergovernmental organizations and non-governmental organizations to submit information relevant to the Committee's activities under the Convention.

21. The Committee attaches particular importance to information obtained from specialized agencies and non-governmental organizations, as such information is often the result of a close monitoring of the situation carried out inside the country. Furthermore, those agencies and organizations can play an important role in the context of implementation of the Committee's recommendations at the national level.

22. The information submitted in writing by NGOs is brought to the attention of the State concerned unless the authors object. This practice allows the State party to be better prepared to respond to questions that may be posed by the Committee on the basis of such information and facilitates the dialogue. If the NGO does not wish the information it submitted to be transmitted to the State party concerned, the Committee cannot take it into consideration during its dialogue with that State.

23. Non-governmental organizations may also ask to brief Committee members orally during the session. Such briefings, devoted to one country at a time, are limited to the attendance of Committee members only.

Other matters

Cooperation with other United Nations human rights bodies

24. The Committee interacts with other human rights treaty bodies, particularly on matters related to methods of work, through the participation at the inter-committee meetings and meeting of persons chairing the human rights treaty bodies. It also maintains regular contacts, directly and through the Secretariat, with the other United Nations bodies and mechanisms dealing specifically with torture, i.e. the Special Rapporteur on torture of the Commission on Human Rights and the Board of Trustees of the Voluntary Fund for Victims of Torture. The purpose of such contacts is to exchange information, coordinate activities and avoid duplication.

Statements and general comments adopted by the Committee

25. The Committee adopts statements to draw attention to and highlight the importance of major developments and issues that bear upon the implementation of the Convention and to clarify its position with respect to such issues. The Committee may issue a statement independently or jointly with other United Nations bodies, as it deems appropriate. Joint statements are usually issued on the occasion of the United Nations International Day in Support of Victims of Torture.

26. The Committee may also adopt general comments on specific provisions of the Convention or issues related to their implementation. Thus, a general comment was adopted in 1997 on the implementation of article 3 in connection with article 22 of the Convention.[e]

Notes

[a] CAT/C/3/Rev.4.

[b] CAT/C/4/Rev.2 for initial reports and CAT/C/14/Rev.1 for periodic reports.

[c] Rule 66, paragraph 2, of the rules of procedure.

[d] Rule 68, paragraph 1, of the rules of procedure.

[e] A/53/44, paragraph 258, or Compilation of general comments and general recommendations adopted by human rights treaty bodies (HRI/GEN/1/Rev.6), pp. 279-281.

Annex VII

DECISIONS OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION

A. Decisions on merits

Communication No. 135/1999

Submitted by:	S.G. (represented by counsel, Ms. Mariette Timmer)
Alleged victim:	Complainant
State party:	Netherlands
Date of complaint:	19 July 1999

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 May 2004,

Having concluded its consideration of complaint No. 135/1999, submitted to the Committee against Torture by S.G. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is S.G., a Turkish national born in 1965, currently residing in the Netherlands and awaiting deportation to Turkey. He claims that his forcible return to Turkey would constitute a violation by the Netherlands of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 18 August 1999 the Committee transmitted the complaint to the State party; pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Turkey, pending consideration of his case by the Committee. By note dated 13 October 1999, the State party acceded to this request.

Facts as submitted by the complainant

2.1 The complainant is a Turkish national of Kurdish ethnic origin from the city of Batman in eastern Turkey. In 1993 he became a supporter of the National Liberation Front of Kurdistan (ERNK), the political wing of the PKK. In 1994 the complainant became a member of the People's Democratic Party (HADEP). He participated in meetings, and collected money and food for Kurds who were forced[a] to leave their villages and relocate to Batman.

2.2 On 19 March 1995, the complainant was arrested with seven others, for reasons unspecified, and detained for 15 days. During this time he claims to have been subjected to torture on several occasions, which left scars on his back and left leg.[b]

2.3 On 10 May 1997, the complainant was arrested by four policemen whilst on his way to a meeting of the Turkish Human Rights Association (IHD). He was blindfolded and taken to a field, where the policemen threatened to kill him if he did not become a police informer and provided them with names of PKK, ERNK and HADEP sympathizers. The complainant was frightened and agreed to cooperate, upon which he was released. He then went into hiding, and fled to Istanbul on 14 May 1997. From there, he left Turkey for the Netherlands on 29 May 1997, with a false passport.

2.4 After arriving in the Netherlands, the complainant learned from his father that the authorities had been looking for him, that the family house was under police observation, and that his father had been questioned by the police about his son's whereabouts on several occasions.[c] He also learned that the police had asked his father in writing for information about his son's whereabouts.

2.5 On 29 May 1997, the complainant applied for asylum in the Netherlands. This was rejected by the Secretary of the Ministry of Justice on 13 August 1997. On 25 August 1997, the complainant requested the Secretary of Justice to review his decision, but this was declined on 29 September 1997. An appeal against the refusal of the Secretary to grant asylum was dismissed by the District Court of The Hague on 23 July 1998. Thereafter, the complainant left the Netherlands for Denmark,[d] and applied for asylum in that country.[e]

2.6 The complainant left Denmark on 14 February 1999 and returned to the Netherlands on 15 February 1999. Shortly afterwards,[f] he participated in a demonstration against the role of the Greek Government in the arrest of Abdullah Ocalan, resulting in the occupation of the Greek ambassador's residence in The Hague by approximately 200 Kurds, including the complainant. The occupation received considerable international attention. The Turkish media described the occupation as a "PKK activity", and labelled the participants as "terrorists". After the occupation ended, the complainant was arrested in connection with his involvement in the occupation, and on 20 February 1999, he was placed in alien detention, and subsequently prosecuted.[g]

2.7 On 23 February 1999, whilst in alien detention, the complainant filed a second application for asylum with the Dutch authorities. On 19 March 1999, the Secretary of Justice held the application for asylum to be inadmissible.[h] An appeal from this decision to the District Court of The Hague was rejected on 7 May 1999.

2.8 The complainant claims that, in addition to his participation in the occupation of the Greek ambassador's residence in The Hague, he participated in other Kurdish political activities. In the Netherlands he took part in: meetings in The Hague and in Arnhem in 1997;[i] a "celebration" on 15 August 1997 in Middelburg; the "Newroz celebration" on 21 March 1998 in Middelburg; the International Labour Day celebration on 1 May 1998 in Rotterdam; and the "Mazlum Dogan" Youth festivals in 1998 in several Dutch cities. In Denmark, he participated in meetings in Copenhagen where unspecified leaflets were handed out, and in what he describes as "different 'Abdullah Ocalan related' activities".[j] He also refers to his participation in several "Kurdish activities" in Germany, France and Belgium.

2.9 The complainant refers to the general human rights situation in Turkey, and in particular to reports from a number of non-governmental organizations and Governments concerning the practice of torture in Turkey. He refers to the reports of Amnesty International and Human Rights Watch published in 1999, which indicated that torture in Turkey was "commonplace" and "widespread". Reference is made to a report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment dated 23 February 1999, which refers to a visit by that body to Turkey in 1997 and notes that the existence and extent of the problem of torture in Turkey had been established beyond doubt. In particular, the author refers to a 1999 report by the Swiss Refugee Assistance Association (*Schweizerische Flüchtlingshilfe*), which describes the "deteriorating human rights situation in Turkey due to the arrest of the PKK leader Abdullah Ocalan", and notes that groups at risk of torture upon return to Turkey included members and sympathizers of HADEP, and persons involved with illegal parties and organizations.

The complaint

3. The complainant claims that he would be at risk of being tortured if he were returned to Turkey, and that his return would constitute a violation of article 3 of the Convention. The risk of torture is said to arise from the fact that he is a young Kurd who was previously tortured in Turkey, and that he has engaged in political activities both inside and outside Turkey. In this regard, he claims that there is a real risk that his involvement in the occupation of the Greek ambassador's residence in The Hague is known to the Turkish authorities.

The State party's observations on admissibility and merit

4.1 By note dated 13 October 1999, the State party advised that it did not object to the admissibility of the complaint; its observations on the merits of the complaint were transmitted by note of 18 February 2000.

4.2 The State party contends that the expulsion of the complainant would not violate article 3 of the Convention. It describes the legal processes by which an application for refugee status in the Netherlands may be made, and how administrative and judicial appeals may be pursued. The relevant legislative framework for the admission and expulsion of aliens is set out in the Aliens Act, and related regulations. Asylum-seekers are interviewed twice by the immigration authorities, and on the second occasion the focus is on the person's reasons for leaving the country of origin. Legal counsel may attend the interviews. The asylum-seeker receives a copy of a report made after the interviews, and has two days to submit corrections or additions to the report. A decision is then made by an official of the Immigration and Naturalization Service (IND) on behalf of the State Secretary for Justice. If the application is denied, the applicant may lodge an objection, in which case the application will be reviewed by the IND. In certain cases it must consult the Advisory Committee on Aliens Affairs (ACV). A recommendation is made to the State Secretary for Justice, who decides on the objection. If the objection is dismissed, an appeal can be lodged with the District Court.

4.3 The State party recalls that its Ministry of Foreign Affairs periodically issues country reports on the situation in countries of origin to assist the IND in its assessment of asylum applications. When compiling these reports, the Minister makes use of published sources and reports by non-governmental organizations, as well as reports by Dutch diplomatic representations. In its report of 17 September 1999, the Minister noted that, although the human rights situation in Turkey was "clearly deficient", increased international monitoring had lead to an improvement in a number of fields. It stated that many human rights abuses were related to the "Kurdish question", and that they consisted mostly of restrictions on the right to freedom of expression and assembly. The report noted that Kurds suffering from persecution could in general settle elsewhere in Turkey, and that in most European countries the situation in Turkey was not regarded as constituting grounds for not returning rejected asylum-seekers to that country.

4.4 The State party emphasizes that the human rights situation in Turkey receives continued attention from the Dutch Government, and that in July 1999, influenced by reports of the death of a former asylum-seeker who was expelled to Turkey in April 1999, it suspended the expulsion of Kurds to Turkey. By letter of 8 December 1999, the State Secretary for Justice stated that, on the basis of investigations conducted by the Ministry of Foreign Affairs, it had been decided to resume expulsions.[k]

4.5 In relation to the petitioner's personal circumstances, the State party summarizes the information provided by the complainant to the IND during the first and second interviews, relating to his activities in Turkey and his treatment by the Turkish authorities. It notes that, in his decisions of 13 August and 29 September 1997, the State Secretary for Justice concluded that the complainant was not a refugee and that he did not face a genuine risk of being subjected to inhuman treatment within the meaning of article 3 of the European Convention on Human Rights in the event of his return. The Hague District Court dismissed the complainant's appeal on 23 July 1998. The complainant's second asylum application was rejected on 19 March 1999, and this decision was upheld on appeal by the Hague District Court on 7 May 1999. The State party remarks that, following proceedings by the author to challenge his alien detention, the detention order against him was withdrawn with effect from 1 September 1999.

4.6 The State party observes that the existence of a consistent pattern of gross violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon being returned to that country; specific grounds must exist indicating that the individual concerned would be personally at risk.[l] The individual must face a real, foreseeable and personal risk of being tortured in the country to which he is to be returned.[m] In light of the State party's own country reports, the general situation in Turkey is not such as to believe that persons from Turkey, including Kurds, are in general danger of being subjected to torture.

4.7 The State party contends that the political activities in which the author claims to have been involved in Turkey do not suggest that he would be the object of the Turkish authorities' particular attention. These activities were marginal in nature, such as collecting money. The author had not claimed to know other members of the ERNK, or that he had any special function within the group. His involvement with HADEP consisted only of attending meetings. He had not demonstrated that, through these activities, he had come to the special notice of the Turkish authorities. Thus, the authorities, having learned of his membership of HADEP in March 1995, released him unconditionally in April 1995.[n]

4.8 The State party notes that the complainant had made conflicting statements about the circumstances of his arrest on 10 May 1997. First, the State party's country reports indicated that all local branches of the IHD, to one of which the complainant had allegedly been travelling when arrested, had been closed. The complainant was unable to provide details of the whereabouts of the IHD office. Secondly, he gave conflicting accounts of the timing of the various events on the night of 10 May 1997 - he claimed he was held until midnight, and, after a two hour car journey, was questioned for a further two hours. This was inconsistent with his claim that he was later dropped off in his home town at 2.30 a.m. The State party further considers it implausible, as appears to transpire from the author's account, that a person identified by the authorities as a potential informer would not immediately be asked for names of PPK and HADEP members. It concludes from the fact that the authorities did not specifically instruct him about his tasks as an informer and left him alone in the days following 10 May 1997, that they did not regard his as an important opposition figure. In his second interview with the IND, the complainant stated that he was only a passive member of HEDAP, and did not know any active members of ERNK. The State party thus does not consider that the author is regarded by the Turkish authorities as a significant Kurdish opposition figure. The State party adds that the police request to the complainant's father for information about the complainant's whereabouts did not suggest anything untoward, and that the information from the father about the authorities' interest in his son's whereabouts is unreliable in any event, because the father cannot be considered an objective source of information in relation to his son's complaint.

4.9 In relation to the complainant's political activities outside Turkey, the State party notes that no evidence was presented to substantiate these, and in any event, the activities cited are not significant. It rejects as unfounded the assertion that there is a real risk of these activities being known to the Turkish authorities. As to the complainant's involvement in the occupation of the Greek ambassador's residence in The Hague, the criminal proceedings against the complaint were dropped for lack of evidence. Even if the complainant's involvement in this incident was known to the Turkish authorities, it was not sufficiently dissident in nature to cause them to target him.

4.10 The State party notes that the mistreatment° allegedly suffered by the complainant while under arrest in March 1995 is not of overriding relevance to the question at hand. The fact that a complainant has previously been subjected to torture is only one of the considerations identified by the Committee's general comment as relevant to the consideration of a claim under article 3. The State party contends that the past mistreatment of the complainant, following a police raid that was not aimed at him personally, does not suggest that the author runs a personal risk of torture if returned to that country. Further, the torture allegedly suffered by the complainant in 1995 cannot be described as "recent". Finally, following his release in April 1995, he experienced no difficulties with the authorities until 1997. In light of the above, the State party considers that there is no question of a violation of article 3 and that the complaint is unfounded.

The complainant's comments on the State party's observations

5.1 In his comments on the State party's observations, dated 5 January 2003, the complainant challenges the State party's doubts about his credibility. He affirms that not all local branches of the IHD had been closed at the time of his arrest in May 1997, and that such branches were both closed and opened regularly at that time. As to the discrepancies in the timing of the events of 10 May 1997, he states that the times given to the Dutch authorities were estimates only, and that he was very frightened at the time of the incident, which impaired his perception. He further states that he cannot be asked to account for the reasons why the Turkish authorities did not demand names from him prior to releasing him. Finally, he notes that the authenticity of the police "summons" to his father for information about his whereabouts had not been contested by the State party.

5.2 The complainant contends that Turkey is a State with a consistent pattern of human rights abuses, that he was tortured in the past by Turkish police,[p] that he was engaged in political and other activities inside and outside Turkey which make him particularly vulnerable to a risk of torture upon his return, and that the accounts of his experiences are consistent. The Committee should therefore conclude that the return of the complainant to Turkey would constitute a violation of article 3 of the Convention.

Issues before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being considered under another procedure of international investigation or settlement, and that no obstacle to admissibility arises in this regard. The Committee notes that the State party does not object to the admissibility of the complaint. As the Committee sees no further obstacles to the admissibility of the communication, it declares the complaint admissible and proceeds to its consideration on the merits.

6.2 The Committee must determine whether the forced return of the complainant to Turkey would violate the State party's obligations under article 3, paragraph 1, of the Convention not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In reaching its conclusion, the Committee must take into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim is to establish whether the individual concerned would be at personal risk of torture in the country to which he or she would be returned. In accordance with the Committee's jurisprudence, the existence of a consistent pattern of gross, flagrant or mass violation of human rights in a country does not of itself constitute sufficient grounds for determining whether the person in question would be at risk of being subjected to torture upon return to that country. Nor does the absence of such a situation mean that a person cannot be considered at risk of being subjected to torture.

6.3 The Committee recalls its general comment on article 3, which states that the Committee must assess whether there are "substantial grounds for believing that the author would be in danger of torture" if returned, and that the risk of torture "must be assessed on grounds that go beyond mere theory or suspicion". The risk involved need not be "highly probable", but it must be "personal and present".[q] In this regard, in previous decisions, the Committee has consistently determined that the risk of torture must be "foreseeable, real and personal".[r]

6.4 In assessing the risk of torture in the present case, the Committee notes that the complainant claims to have been detained and tortured previously by the Turkish authorities. However, the alleged acts of torture occurred in 1995. The Committee notes that, in accordance with its general comment on article 3, information which is considered pertinent to risk of torture includes whether the complainant has been tortured in the past, and if so, whether this was in the recent past. The incidents referred to took place nine years ago, a lapse of time which cannot be described as recent.

6.5 The Committee must also consider whether the complainant has engaged in any political or other activity within or outside his own country which would make him particularly vulnerable to any risk of torture upon return to Turkey. In relation to his activities inside Turkey, the complainant's political activities included collecting money and food for displaced Kurdish villagers. Although he claims to have been detained on two occasions, the complainant does not establish that he was in fact, or was regarded by the Turkish authorities as, a significant Kurdish opposition figure. Nor does he allege to have had any special role within the relevant organizations. As to his activities abroad, the complainant has listed instances of participation in political activities and meetings. Some of these are referred to in very general terms, although particular reference is made to the complainant's participation in the occupation of the Greek ambassador's residence in The Hague in 1999. However, it has not been established that the Turkish authorities are aware of the complainant's participation in this event or any of the other matters referred to. The Committee notes in this regard that proceedings against the author in connection with the occupation of the residence in The Hague were discontinued for lack of evidence. Nor has it been established that, if the Turkish authorities were indeed aware of these actions, this would place the complainant at particular risk of torture upon his return to Turkey.

6.6 The relevant evidence regarding the complainant's history in Turkey, together with his activities inside and outside Turkey, has been considered by the Dutch authorities. The Committee is not in a position to challenge their findings of fact, nor to resolve the question of whether there were inconsistencies in the complainant's account. Consistent with the Committee's case law, due weight must be accorded to findings of fact made by government authorities.

6.7 In light of the foregoing, the Committee finds that the complainant has not established that he would face a foreseeable, real and personal risk of being tortured in the event of his return to Turkey, within the meaning of article 3 of the Convention.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to Turkey would not constitute a breach of article 3 of the Convention.

Notes

[a] No details are provided.

[b] Reference is made to a very brief medical report in Dutch (untranslated), which is again referred to in the complainant's comments on the State party submissions. There, a description of the medical report is provided in English (see page 3 of that document, under the heading "Ad 2&3").

[c] In the State party's response, it appears that the complainant had told the immigration officials that his father had been arrested. This is not referred to in the initial communication.

[d] No date is provided.

[e] No details are provided.

[f] No date is provided.

[g] There are no details of the charges, or of any conviction or sentence.

[h] No details are provided.

[i] No details are provided.

[j] No details are provided.

[k] No details are provided of the form or results of the investigation.

[l] Reference is made to the Views of the Committee concerning communication No. 91/1997, *A. v. The Netherlands*, 13 November 1998, and communication No. 28/1995, *E.A. v. Switzerland*, 10 November 1997.

[m] Reference is made to the Committee's general comment on article 3.

[n] This was not referred to in the initial communication, although it is possible that it is referred to in the attachments to the communication, which are in Dutch.

[o] Whilst not explained in the complainant's communication, the State party notes that the complainant was allegedly soaked in cold water, and beaten with fists, sticks and knives.

[p] Note: he states here that he was tortured in both 1995 and 1997, although the initial complaint refers only to 1995. Presumably, the torture referred to from 1997 relates to the authorities allegedly threatening to kill him if he did not agree to act as an informer.

[q] General comment No. 1 (1996).

[r] Views of the Committee on communication No. 204/2002, *H.K.H. v. Sweden*, adopted 28 November 2002.

Communication No. 148/1999

Submitted by:	A.K.
Alleged victim:	The complainant
State party:	Australia
Date of complaint:	13 October 1999 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 5 May 2004,

Having concluded its consideration of complaint No. 148/1999, submitted to the Committee against Torture by A.K. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22 of the Convention.

1.1 The complainant is A.K., a Sudanese national, currently detained at the Immigration Detention Centre, New South Wales. He claims that his forcible return to Sudan would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment by Australia. The complainant was initially represented by counsel.[a]

1.2 On 1 November 1999, the State party was requested, pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, not to expel the complainant, while his complaint is under consideration by the Committee. On 20 January 2000, the State party confirmed that it would accede to this request.

Facts as presented by the complainant

2.1 The complainant alleges that he is Ansari and a member of the Umma Party, which is one of the two traditionalist parties of the North opposing the current Government. From 1990 to 1995, the complainant attended Cairo University, Khartoum Branch, where he completed a law degree. The Umma Party had about 100 members at Cairo University, and the complainant became the leader of this group.

2.2 In April 1992, the complainant alleges to have organized rallies and demonstrations against the Government. Following one of these rallies, he was detained by members of the security forces. He was threatened, forced to sign an undertaking that he would not participate in political activities and then released. Following this incident, the security forces kept him under surveillance.

2.3 While he was attending university, the complainant alleges that students were compelled to join the People's Defence Force (PDF), the army of the ruling party, the National Islamic Front (NIF). To avoid conscription the complainant became a police officer, and from 1993 to 1995, he worked at the head office of the Khartoum prison administration and sometimes at Kober prison.

2.4 In 1994, the Government sent students who were seen as troublemakers and opponents of the regime to fight in Southern Sudan. On 1 June 1996, the complainant allegedly received a summons stating that he had to report to the PDF within 72 hours as he had been chosen "to fulfil the duty of Jihad". As he did not want to fight against his own people or to clear minefields, he decided to flee the country. He was unable to use his passport because of the summons and therefore used his older brother's passport. After his departure the military allegedly visited his home.

2.5 On 10 December 1997, the complainant arrived in Australia without valid travel documents and was detained pending final resolution of his asylum claims. On 12 December 1997, he filed an application for a protection visa (refugee status) with the Department of Immigration and Multicultural Affairs (the DIMA). In support of his application, he submitted, inter alia, the following: a letter from the Umma Party confirming his membership; a letter from the Commander of the Popular Forces to the Manager of the Department of Prisons to release the complainant and present himself to the PDF; and a statement from a member of the Australian Sudanese community who stated that she had no doubt that the complainant was a Sudanese citizen and belonged to a family known to be strong supporters of the Ansar group, which supports the Umma Party.

2.6 On 5 January 1998, a delegate of the DIMA denied the complainant's application for a protection visa, finding that he was not a citizen of Sudan and that his claims lacked credibility. On 5 February 1998, the complainant sought administrative review of the delegate's decision before the Refugee Review Tribunal (the RRT). By decision of 7 July 1998, the RRT refused the complainant's application. The complainant lodged an application for judicial review with the Federal Court of Australia. On 25 August 1998, the Court remitted the application back to the RRT for a second determination.

2.7 On 25 November 1998, the newly constituted RRT denied the complainant's application. The matter was appealed to the Federal Court, at which the complainant was unrepresented. During the hearing, he said that the interpreter who had assisted him at the RRT hearing was inadequate and that he had been misunderstood. The hearing was adjourned so that the complainant could obtain legal representation. On 9 August 1999, the Federal Court dismissed the appeal. Several subsequent requests for ministerial intervention were denied.

2.8 The complainant outlines the recent political history of Sudan and claims that there is a consistent pattern of gross, flagrant and mass violations of human rights. He refers, inter alia, to the adoption of a country resolution in April 1997 by the United Nations Commission on Human Rights, according to which human rights violations in Sudan included "extrajudicial killings, arbitrary arrests, detentions without due process, enforced or involuntary disappearances, violations of the rights of women and children, slavery and slavery-like practices, forced displacement of persons and systematic torture, and denial of the freedoms of religion, expression, association and peaceful assembly".

2.9 In January 1998, the United Nations Special Rapporteur on Sudan reported that the authorities, security forces and militia were responsible for a broad range of human rights violations. In April 1998, the United Nations Commission on Human Rights again expressed deep concern over continued serious human rights violations. For the fourth year running, the Commission recommended deploying human rights field officers to monitor human rights.

2.10 The complainant alleges that although much of the religious persecution has been directed against non-Muslims, the fundamentalist nature of the current regime is such that many Muslims, including the Sufis, are not free to practise their own brand of Islam under the NIF regime. The Ansar (consisting largely of Sufis) have been subjected to government control with the confiscation of their mosques. In addition, Muslim groups critical of the Government continue to suffer harassment.[b] On the political level, the complainant submits that contrary Islamist political opinions, including centrist Islamic parties such as the Umma are not tolerated.

2.11 According to the complainant, there is evidence that military deserters will face torture and death. Amnesty International reported in April 1998 that: "Scores of student conscripts died as hundreds of youths broke out of a military training camp at al-Ayfun near Khartoum. The authorities announced that more than 50 deserters had drowned trying to cross the Blue Nile. However, other reports said that over 100 were killed, many of whom had been shot and others beaten to death." He also submits that both the UNHCR and Amnesty International have reported on the detention centres in Sudan and on the risk of ill-treatment and torture, in particular during interrogation in security offices.[c] According to the complainant, "a failed Sufi", Umma Party asylum-seeker, who has spent considerable time in the West, and who has qualified in law, whether or not his military service has been completed, would face considerable difficulty on return to Sudan.

The complaint

3. A.K. claims that his forced repatriation to Sudan would violate his rights under article 3 of the Convention, as there are substantial grounds for believing that he would be in danger of being subjected to torture. In support of his claim, he argues that his religion, his prior political activities, and the fact that he is a military deserter, puts him at a real personal risk of being subjected to torture. That he fled the country to avoid conscription would expose him to a threat of execution on return. Finally, he claims that if he were sent back he would be required to serve with the PDF and would be forced to fight against his will in the civil war.

The State party's submission

4.1 By submission of 7 November 2000, the State party contests the admissibility and merits of all aspects of the complaint. On admissibility, the State party submits that the complainant has failed to substantiate his claim, misinterpreted the scope of its obligation under article 3, and failed to establish a substantial and personal risk of torture.

4.2 The State party invites the Committee to decide that findings of fact by domestic bodies, that are relevant to the assessment of risk under article 3, will be accepted by the Committee unless there is clear evidence of manifest arbitrariness, injustice or a violation of judicial independence or impartiality. It submits that the interpretation and application of domestic law is primarily a matter for national courts and generally not appropriate for review by the Committee. It further argues that the RRT is independent and experienced in the review of Sudanese citizens' applications, having received 21 applications from Sudanese nationals in 1997 and 1998. Of the 8 applications that were heard and determined among the 21 applications made, the RRT set aside the decision of the immigration authorities to refuse a protection visa in the majority of cases (5), and affirmed the decision in 3 cases. In this case, the complainant had the benefit of two separate hearings before the RRT. His legal representative was present during both hearings and he was assisted by a professional interpreter on each occasion. The State party notes that the complainant has not provided the Committee with any new country information that was not also available to, and considered by, the RRT.

4.3 The State party submits that the evidence supporting the allegation of torture lacks credibility and accordingly a prima facie case has not been established. In the course of questioning by the RRT, the complainant made inconsistent statements concerning three significant issues. Firstly, he significantly changed his evidence regarding previous experiences with the Sudanese authorities. On arrival at Sydney airport and when asked whether he was threatened with physical violence by the Sudanese authorities, he answered "Yes". However, when asked, "In what form?", he changed his response to, "No, I have not been threatened". He then became uncooperative with the interpreter.

4.4 When interviewed by the DIMA, the complainant asserted that he had told the interpreter at the airport that he had been threatened with "cutting fingernails, and also hitting the chest - like burning ... removing the fingernails", but that he had not been tortured. He also claimed to have been threatened with these forms of torture in his supporting statement for his protection visa application, prepared between the airport and DIMA interviews with the assistance of a legal representative. In the State party's view, his explanation that the interpretation and/or transcription of his airport interview was inadequate is unconvincing.

4.5 Secondly, the complainant made contradictory statements about the acquisition of the passport he used to enter Australia and his use of passports generally. The complainant continued to make inconsistent statements on this issue throughout the procedure to such an extent that the delegate of the DIMA could make no finding as to his identity or nationality. The State party sets out in detail the contradictions in the complainant's evidence, including one statement that he obtained his passport in the marketplace from a man he did not know and to whom he paid nothing, another that he used his brother's passport to leave Sudan and travel through Chad, Libya, Malta, Malaysia and Singapore over a period of two years, and yet a third contradiction that it was an official passport but it contained wrong information.

4.6 Thirdly, the State party invokes the complainant's lack of credibility concerning his claimed political activities and the interest of the Sudanese authorities therein. His evidence about his political involvement vis-à-vis his employment was implausible, contradictory and became increasingly convoluted over time. During the DIMA interview, the complainant described his main task as guarding either the prison or administration building and ensuring that there were no illegal entries. In the second RRT hearing, he claimed he transmitted letters between political prisoners and their families, without explaining how he had contact with the prisoners when his job was to act as sentinel at the external entrance to the buildings. He also claimed in this hearing that this transmission service operated successfully because the prisoners had an "instinctive ... sense", that he had sympathetic political aims.

4.7 The State party submits that there is a lack of detail concerning, and independent corroboration of, the ill-treatment allegedly experienced by the complainant at the hands of the Sudanese authorities. The complainant only once provided the details of the one incident of alleged physical ill-treatment referred to in paragraph 4.4. Even if this claim was credible, mere threats of physical violence by the Sudanese authorities: arrest and interrogation; and a house search followed by low-level surveillance for a short period do not constitute harm amounting to severe pain or suffering. There is no evidence that the complainant suffered actual physical harm.

4.8 With respect to the alleged rally itself, the State party submits that it has been unable to find any information referring to such a rally in April 1992. Given that it is the only public political event that the complainant alleges to have been involved in, the failure of either his representatives or the State party to uncover any evidence of it seriously undermines the credibility of his claim. The complainant attempted to play down the scale of this rally when asked to explain why there was no independent evidence that it had taken place.

4.9 With respect to the evidence provided to corroborate the complainant's claim that he was politically active in the Umma Party, the evidence produced by him in the form of a fax from the London branch was rejected by the RRT for its low probative value. There is no information in the fax that demonstrates any knowledge of the complainant personally, beyond stating that he is a party member, and simply makes general statements about the persecution of Umma members in Sudan. A letter from the National Democratic Alliance (Sudan) Australia Branch (NDA), dated 5 February 1998, addressed "to whom it may concern" similarly displays a lack of specific knowledge of the complainant's circumstances or background. It refers to him only once, describing him as "a political activist [who is] committed and opposing to [sic] the Government of Sudan since June 30, 1989, when the Democratic Government was overthrown". As the RRT member noted in the reasons for her decision, the complainant never claimed to either DIMA or the RRT that he was a political activist from the time of the coup. In fact, at the second RRT hearing, he claimed that he had been active only in 1992 and 1993.

4.10 The State party notes that the evidence given both orally and in writing to the RRT, a member of the local Sudanese community, whom the complainant met for the first time in Sydney, is of equally doubtful probative value. She stated at the first RRT hearing that she did not know the complainant in Sudan, but went to school with two of his cousins, and that she telephoned the London branch of the Umma Party to confirm his membership. While her claims may be true, the State party deems information about the level of generality she obtained from the London Umma branch to be less significant than the complete absence of documentary evidence from the complainant himself regarding his Umma membership and his alleged reputation as a political dissident. Her statement, if accepted, merely supports the complainant's claim that he is of Sudanese origin.

4.11 On the issue of the complainant's alleged conscientious objection, the State party submits that his evidence before the RRT regarding compulsory military service was contradictory and unconvincing and there is no independent corroborating evidence of his conscientious objection to the civil war. The State party sets out in detail the complainant's evidence on this issue to the first and second hearing of the RRT, which differs in many respects. Significantly, the member of the second RRT did not accept his claims concerning his being called up for duty and did not except that the letter provided by the complainant as evidence that he had been called up to fight for the PDF was genuine. The State party submits that the complainant provided no evidence that he would be treated as a deserter. Even if it were to assume that he is a conscientious objector and that he would be forced to participate in the civil war through non-discriminatory conscription, this does not amount per se to torture as defined in the Convention.

4.12 The State party submits that even if it were accepted that the complainant has either evaded the draft or deserted, there is little evidence to suggest that this would place him at risk of torture if he is returned to Sudan. Since the enactment of the new Sudanese Constitution in 1998, torture or execution carried out in any circumstances, including desertion, is illegal. Having carefully assessed the available information, the State party believes that the complainant would not face torture or execution as a result of avoidance of military service. Even if the complainant did face some form of sanction for his claimed "desertion", the available information indicates that he would be classified as a draft evader rather than a deserter, and thus face a prison sentence of no more than three years.

4.13 The State party concedes that Sudan has a poor human rights record, and that both government and non-government forces continue to commit abuses of human rights. It notes the general findings of the Commission on Human Rights[d] that a failure of the united Inter-Governmental Authority on Development to consolidate the 1994 Declaration of Principles (DOP) agreed to by the Sudanese Government and the warring factions resulted in the continuation of the conflict in the south. However, it argues that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not, as such, constitute a sufficient ground for determining that a person would be in danger of being subjected to torture upon his return to that country. Specific grounds must exist to indicate that the alleged victim is personally at risk of torture by removal. Such grounds must go beyond mere theory or suspicion.[e]

4.14 Even if the State party were to accept that the complainant is Sudanese and that he was arrested at a rally in April 1992, it does not accept that he belongs to a high-risk group. The complainant never practised as a lawyer, he is no longer a student and has not been politically active since April 1992. Moreover, he has been out of Sudan since 1996, from which time onward he has done nothing to raise a profile in Sudan. The complainant does not fit the description of a targeted "rank and file activist or student", nor that of a youth, student leader or lawyer who might be viewed as a political opponent and thus a target of torture by the Government.[f] A UNHCR Sudan Update written in 1997 concludes that Umma and another opposition party, the Democratic Unionist Party, are outdated and that most young people do not pay attention to them. Neither of these sources supports the credibility of the complainant's claims of belonging to Umma, or of his fear of torture.[g]

4.15 Finally, advice from Australia's Department of Foreign Affairs and Trade states that "it is not unusual for Sudanese nationals to remain outside Sudan for long periods, usually for economic reasons".[h] Information sought from other countries on conditions in Sudan and profiles of Sudanese refugee applicants indicate that while members of the Umma Party or Ansar are sometimes persecuted in Sudan, many persons claim to be party members. Consequently, it is necessary to verify the veracity of these declarations and the degree of personal commitment of the claimants.

4.16 As to whether the complainant would risk to be subjected to torture for having sought asylum in Australia, the State party submits that there is little evidence to support this possibility. According to the complainant's own evidence, on returning to Sudan his brother was arrested and interrogated as to where he had been and what he was doing outside Sudan when he returned, but was released unharmed after five days. The State party has been advised by the DIMA officer in Cairo that it is aware of Sudanese nationals who returned after fleeing Sudan following the 1989 coup, including nationals who were granted refugee status in Australia and who suffered no problems with the authorities on return to Sudan. The State party also refers to information from the Australian Department of Foreign Affairs and Trade from April 2000, which indicated that the Umma Party and the Sudanese Government were attempting to reconcile their differences.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being examined under another procedure of international investigation or settlement.

5.2 The Committee notes that the fact that domestic remedies are exhausted is not contested by the State party. The State party objects to admissibility on the grounds that the complainant has not established a prima facie case of a violation of article 3, but the Committee is of the view that the complainant has provided sufficient information in substantiation of his claim to consider his complaint on the merits. As the Committee sees no further obstacles to the admissibility of the complaint, it declares the complaint admissible and proceeds to its consideration on the merits.

Consideration on the merits

6.1 The Committee must decide whether the forced return of the complainant to Sudan would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. To reach its conclusion, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.2 In assessing the risk of torture in the complainant's case, the Committee notes the substantial inconsistencies in the complainant's evidence throughout the proceedings, highlighted by the State party, which, in this case, was considered in depth by the Refugee Review Tribunal on two separate occasions. It observes that the complainant has not explained nor given any reasons for these inconsistencies and notes paragraph 8 of its general comment No. 1, pursuant to which questions about the credibility of a complainant, and the presence of relevant factual inconsistencies in his claim, are pertinent to the Committee's deliberations as to whether the complainant would be in danger of being tortured upon return.

6.3 Concerning the allegations of political involvement and previous ill-treatment at the hands of the Sudanese authorities as grounds for fearing that the complainant would be subjected to torture on return, the Committee notes that even if it were to discount the above-mentioned inconsistencies and accept these claims as true, the complainant does not claim to have been politically involved since 1992, and at no time during the domestic proceedings nor in his complaint to the Committee did he claim to have been tortured by the Sudanese authorities.

6.4 On the issue of his alleged desertion, the Committee notes that the State party did examine the letter, dated 1 June 1996, in which the complainant was allegedly drafted by the PDF, but considered it not to be genuine. The Committee considers that due weight must be accorded to findings of fact made by domestic, judicial or competent government authorities unless it can be demonstrated that such findings are arbitrary or unreasonable. Even if the Committee were to consider that the complainant is a deserter or evaded the draft, he has not demonstrated that he would be subjected to torture upon his return to Sudan. The Committee observes that the State party considered a significant amount of information from various different sources before arriving at this conclusion.

6.5 The Committee notes the claim that if returned to Sudan, the complainant would be compelled to perform military service, despite the fact that he is a conscientious objector, and the implication that this would amount to torture, as defined by article 3 of the Convention. The Committee considers that the letter of 1 June 1996, the veracity of which has been challenged, as well as the complainant's allegation that opponents of the regime are called up to fight in the civil war, is insufficient to demonstrate that he either is a conscientious objector or that he would be drafted on return to Sudan. As with the other reasons for claiming a fear of torture on return, the State party's evaluation of the facts in this respect has not been shown to be unreasonable or arbitrary.

6.6 On the basis of the foregoing, the Committee considers that the complainant has not provided a verifiable basis to conclude that substantial grounds exist for believing that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to Sudan, within the meaning of article 3 of the Convention.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to Sudan would not constitute a breach of article 3 of the Convention.

Notes

[a] On 20 March 2004, the author's representatives informed the Committee that they no longer represented the complainant.

[b] The complainant refers to Amnesty's Annual Report of 1999 in which it reported that those detained in 1997 included five imams who were reported to have cast doubt on the religious credentials of Hassan al-Turabi, Secretary-General of the National Congress and ideological mentor of the Government.

[c] He refers to Amnesty International's Urgent Action of 21 January 1997.

[d] Report of the Special Rapporteur on the situation of human rights in the Sudan (E/CN.4/1999/38/Add.1) (17 May 1999).

[e] The State party refers to the Committee's general comment on article 3 and *Mutombu v. Switzerland*, case No. 13/1993.

[f] As referred to in the 1999 US Department of State Country Report on Human Rights Practices in Sudan.

[g] Gerard Prunier, "Sudan Update: War in North and South", *UNHCR RefWorld-Country Information*, p. 3.

[h] DFAT CA500922 of 22 January 1998, CX27237.

Communication No. 153/2000

Submitted by: Z.T. (represented by Ms. Angela Cranston)

Alleged victim: R.T.

State party: Australia

Date of complaint: 4 January 2000 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 November 2003,

Having concluded its consideration of complaint No. 153/2000, submitted to the Committee against Torture by Ms. Z.T. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22 of the Convention.

1.1 The complainant in the case dated 4 January 2000 is Z.T. She submits the case on behalf of her brother, R.T., an Algerian citizen born on 16 July 1967. She claims that her brother is a victim of violations by Australia of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel.

1.2 On 26 January 2000, the Committee forwarded the complaint to the State party for comments and requested it, under rule 108, paragraph 1, of the Committee's rules of procedure, not to return the complainant to Algeria while his complaint was under consideration by the Committee. The State party, however, expelled the complainant the same day without having had time to consider the request.

The facts as submitted by the complainant

2.1 On 27 November 1997, the complainant, who held a visitor's visa, visited Mecca in Saudi Arabia. He stayed there for seven months. He then "purchased" an Australian visa and left for South Africa, to collect the Australian visa.

2.2 On 21 August 1998, the complainant arrived in Australia from South Africa. He destroyed his travel documents at the airport of arrival. He immediately applied for refugee status at the airport, where he was interviewed by an officer of the Department of Immigration and Multicultural Affairs (DIMA). As undocumented arrival, he was refused immigration clearance under s172 of the Australian Immigration Act. On the same day, he was detained and escorted to Westbridge Immigration Detention Centre.

2.3 On 26 August 1998, the complainant applied for a protection visa. He was assisted by a solicitor from the Legal Aid Commission of New South Wales. On 16 October 1998, his application was rejected by DIMA. On 16 October 1998, he appealed to the Refugee Review Tribunal. The appeal was rejected on 11 November 1998. He further appealed to the Federal Court of Australia, which dismissed his appeal on 10 March 1999.

2.4 The complainant did not appeal the decision of the Federal Court of Australia to the Full Federal Court because his representatives were of the view that, in light of the narrow grounds of review available in the Federal Court, an appeal did not have any prospect of success and therefore did not fall within the guidelines which determine whether legal aid can be granted. He alleges that without legal aid it would have been likely that he would have been unrepresented in his appeal.

2.5 The complainant sent three subsequent appeals to the Minister of Immigration and Multicultural Affairs on 17 March 1999, 6 July 1999, and 26 August 1999. He requested the Minister to exercise his discretion and allow him to stay in Australia on humanitarian grounds. The Minister declined to exercise his discretion in an undated letter received by counsel on 22 July 1999, and a further letter dated 23 August 1999. The Minister's decision was not subject to appeal. On 29 October 1999, an immigration agent from the South Brisbane Immigration and Community Legal Service appealed to the Minister asking to allow the complainant to remain in Australia on humanitarian grounds; the director of Amnesty International Australia also submitted a letter, requesting that the complainant would not be returned "in the foreseeable future".

2.6 The complainant and another two asylum-seekers thereupon started a hunger strike in September 1999. On 8 October 1999, they were removed from Westbridge. They were denied the opportunity to consult with their legal advisers and were not permitted to pack their own belongings. On 16 October 1999, they submitted a complaint to the Minister for Immigration and Multicultural Affairs.

2.7 The complainant alleges that he was not notified of the decision to remove him from Australia. He was effectively removed to South Africa on 26 January 2000.

2.8 In an additional letter dated 12 April 2000, Ms. T. provides further information about her brother. She states that her brother, after his expulsion from Australia, was held for one or two days at an airport hotel in Johannesburg. He was then handed over to South African government officials and was detained as an illegal arrival in the Lindela detention centre for more than 30 days.

2.9 On or about 7 February 2000 he filed an asylum application and was granted a temporary visa, which allowed him to be released from detention.

2.10 On or about 30 January 2000, the complainant was told to expect a visit from the Algerian Ambassador to South Africa. The purpose of the visit was to provide documentation for onwards travel to Algeria. The visit did not take place, after interventions from the complainant's lawyer.

2.11 The complainant claims that he does not feel safe in South Africa after his expulsion from Australia. He argues that there is no guarantee under South African law that he cannot be expelled at any time. His concern about the actions of the South African Government include the notification of the Algerian Ambassador of his presence in South Africa; accepting and then revoking acceptance of an asylum application and revoking the grant of temporary visa; his detention beyond the statutory limit of 30 days in the Lindela detention centre. He claims that because of arms trade between the Governments of South Africa and Algeria, he fears his application will be rejected in deference to trade imperatives.

2.12 It is submitted that the complaint has not been submitted to any other procedure of international investigation or settlement.

The complaint

3.1 The complainant claims that there are substantial grounds for believing that he would be in danger of being subjected to torture upon return to Algeria and that, therefore, Australia would be violating article 3 of the Convention if he were returned there. He claims that he fears prosecution in Algeria on account of his political opinions and membership of the Islamic Salvation Front (FIS). He also fears having to serve in the Algerian army, and claims that members of his family were accused by the Algerian authorities of supporting armed Islamic groups. As a consequence he and other members of his family were targeted by the Algerian army.

3.2 It is submitted that the complainant is personally at risk of being subjected to torture because of his support of the FIS and his close family relationship with several people who have been targeted because of their membership of the FIS and, in some cases, their history of standing as FIS candidates.

3.3 Finally, it is submitted that the complainant is personally at risk of being subjected to torture due to the publication of the decision of the Federal Court. The decision provides personal details and family details, his claims, and the process of his application for protection in Australia. The complainant claims that such publication rendered him personally at risk if he is forcibly returned to Algeria because of the probability that the Algerian authorities are aware of the published decision and of the details of his application for protection.

3.4 The author argues that Algeria remains an authoritarian State with a consistently poor record of gross and flagrant human rights abuses. It is submitted that those detained on national security grounds in Algeria are routinely subjected to torture, and the reports of several organizations are invoked in support of this argument. This evidence is said to establish "substantial grounds" for believing that the complainant would be in danger of being subjected to torture on return to Algeria.

3.5 The complainant seeks a finding that his expulsion from Australia, in circumstances where he does not have the right to return or go to any other country except Algeria, constitutes a violation of article 3 of the Convention.

The State party's submission on the admissibility and merits of the complaint

4.1 On 14 November 2000, the State party submitted its observations on the admissibility and merits of the case. It explains that it was unable to comply with the Committee's request for interim measures of protection because no written request from the Committee had been received by the time of the complainant's removal from Australia on 26 January 2000. The State party adds that UNHCR's office in Australia was notified of the complainant's imminent removal and did not object, and that all potential risks of return had been fully assessed based on available country information.

4.2 For the State party, the complaint is inadmissible as incompatible with the provisions of the Convention. Further, the State party alleges that the complainant has failed to make out a prima facie case that there are substantial grounds for believing that he would be subjected to torture, on the event of his return to Algeria. The State party adds that the complainant has failed to disclose any reasonable basis for his belief that he is at risk of torture.

4.3 The State party observed that there is no evidence that Algerian authorities have ever tortured the complainant in the past, and evidence that he has actually been involved in the political activities of the FIS is very scant. It argues that the account of the complainant's activities contains many inconsistencies, which casts doubts on his credibility. On the strength of the evidence, the State party does not accept that the complainant is an FIS supporter.

4.4 On the possibility that the complainant may be required to undergo military service upon his return to Algeria, the State party argues that the complainant was unlikely to be required to undergo further military service either because he has already completed the service, or because he is too old to be drafted into military service. The State party states that, in any event, any requirement to perform military service does not constitute torture. In addition, the State party invokes the Refugee Review Tribunal's (RRT) finding that the complainant has fabricated his claim to have outstanding military service obligations. The RRT stated that the complainant had exaggerated his claims in comparison to when he first raised them on arrival in Australia.

4.5 As to the publication of the judgement of the Federal Court of Australia, the State party denies that this might prompt the Algerian authorities to torture the complainant upon his return to Algeria. There is no evidence to suggest that the Algerian authorities have shown any interest in the complainant's activities since 1992, when he claims to have been arrested and detained for 45 minutes. The State party notes that the suggestion that the Algerian authorities would be scanning Internet legal databases in Australia to determine his whereabouts strains credulity. For the State party, it is highly unlikely that the publication, on Internet, to refuse him a protection visa would have come to the Algerian authorities' attention. Accordingly, there are no substantial grounds for believing that the complainant is in danger of torture on this count.

4.6 The State party concedes that DIMA had noted that the author's relatives who had experienced harm or mistreatment had been active members of the FIS or Islamic clerics, but on his own evidence, the complainant was neither of these, and had not attracted the attention of the authorities, except once in 1992, when he claimed to have been detained for 45 minutes. Further, the State party cites the RRT's finding that the complainant was able to depart from Algeria on three occasions and to return twice without any problems. This indicates that the complainant does not attract the authorities' attention.

4.7 Moreover, the State party claims that during the hearing, the complainant admitted that none of his immediate family had problems with the authorities (with the exception of his brother-in-law, in 1995), and that he personally had had no problems since his detention in 1992. This again indicates that the complainant does not attract adverse attention from the authorities.

4.8 The State party observes that the complainant has a general fear of harm as a result of civil conflict in Algeria; this fear however is not sufficient to bring him under the Convention's protection. The State party adds that the Minister of Immigration and Multicultural Affairs considered information received from the French and United Kingdom authorities to the effect that they were unaware of any instance in which a person returning to Algeria from those countries had met with violence upon return. The State party also refers to recent reports that indicate that the human rights situation in Algeria has improved.

4.9 The State party also invokes DIMA's opinion, which noted that the Algerian authorities are aware that many citizens who travel to foreign countries make refugee applications to escape from the civil strife and adverse economic situation in Algeria. It is noted that a mere asylum application by an Algerian citizen in another country is not a reason for the Algerian authorities to attempt to persecute or torture that person.

4.10 The State party notes that by letter of 25 January 2000, the complainant was advised that arrangements had been made for him to leave Australia on South African Airways flight SA281, departing Sydney for Johannesburg at 9.40 p.m. on 26 January 2000. He was accompanied by three escorts on the flight to South Africa. Further, the State party adds that the complainant's current whereabouts are unknown to Australian authorities.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 The Committee has noted the State party's information that the return of the complainant was not suspended and that it had not received in time the Committee's request for interim measures under rule 108, paragraph 1, of its rules of procedure. The complainant was returned to Johannesburg on 26 January 2000. He stayed in South Africa for some time, but his current whereabouts are unknown.

5.2 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that the State party has not contested that domestic remedies have been exhausted. The State party further submits that the complainant has not substantiated his case for purposes of admissibility. It refers to the Committee's Views in *G.R.B. v. Sweden*,* in which the Committee held that "A State party's obligation to refrain from forcibly returning a person to another State where there are substantial grounds to believe that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention". The State party also notes that the Committee stated that the burden is on the author to present an arguable case. The State party explains that this means establishing a factual basis for the author's position sufficient to require a response from the State party. It argues that the facts relating to the complainant are not such as to warrant any response from Australia, and reiterates that the Committee noted that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. For the State party, there are no substantial grounds for believing that the complainant will be subjected to torture.

5.3 Notwithstanding the State party's observations, the Committee considers that the complainant has provided sufficient information on the danger the complainant claims to run in the event of his return to Algeria to warrant consideration of his complaint on the merits. As the Committee sees no further obstacles to admissibility, it declares the complaint admissible and proceeds to the consideration of the merits.

Consideration of the merits

6.1 The Committee must decide whether the forced return of the complainant to Algeria would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In order to reach its conclusion the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that, in conformity with the Committee's jurisprudence and despite the allegations of the complainant in regard to the situation in Algeria outlined in paragraph 3.4 above, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.2 The Committee notes that the petitioner invokes protection under article 3 of the Convention on the ground that he is personally at danger of being arrested and tortured in connection with his and his relatives' support for the FIS. His alleged connections with the FIS date back to 1992, when he was detained and interrogated for 45 minutes. It is not submitted that the complainant was tortured or prosecuted for his connections with the FIS before leaving for Saudi Arabia. The complainant has not satisfied the burden placed upon him to support his claim that there are substantial grounds for believing that he would be in danger of being subjected to torture, and that Algeria is a country where a consistent pattern of gross, flagrant or mass violations of human rights exist.

6.3 In the present case, the Committee also notes that the political activities of the complainant's brother-in-law took place about 10 years ago, and that they may not in themselves constitute a risk for the complainant himself to be subjected to torture, should he be returned to Algeria. It further observes that the complainant's alleged fear for military recall is not relevant to the issue under consideration.

6.4 The Committee recalls that, for the purposes of article 3 of the Convention, a foreseeable, real and personal risk must exist of being tortured in the country to which a person is returned or, as in this case, a third country where it is foreseeable that he subsequently may be expelled. On the basis of the above considerations, the Committee considers that the complainant has not presented sufficient evidence to convince it that he would face a personal risk of being subjected to torture in the event of his return to Algeria.

6.5 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to South Africa, on the basis of the information submitted, did not entail a breach of article 3 of the Convention.

Note

[*] Case No. 083/1997, Views adopted 15 May 1998.

Communication No. 182/2001

Submitted by: Mr. A.I. (represented by counsel, Mr. Hans Peter Roth)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 5 March 2001 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 May 2004,

Having concluded its consideration of complaint No. 182/2001, submitted to the Committee against Torture by Mr. A.I. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22 of the Convention.

1.1 The complainant is A.I., a Sri Lankan national of Tamil origin, born in 1977, currently residing in Switzerland, and awaiting his deportation to Sri Lanka. He claims that his forcible return to Sri Lanka would amount to a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 25 April 2001, the Committee forwarded the communication to the State party for comments. The Committee notes that the State party decided, of its own motion, not to return the complainant to Sri Lanka while his case is pending before the Committee.

The facts as submitted by the complainant

2.1 The complainant is from Chankanai in the north of Sri Lanka. In July 1995, he and his family fled the hostilities between combatants in the civil war, and temporarily stayed in a refugee camp near Navaly. During the bombing of a Catholic church in Navaly by the Sri Lankan Air Force, he witnessed the killing of numerous refugees who had sought shelter in that church, including some of his remote relatives. The complainant and his family subsequently went to the then LTTE[*]-controlled Chavakachcheri, where his younger brother, S., joined the LTTE.

2.2 In January 1996, the complainant and his mother travelled to Colombo to make arrangements for his departure from Sri Lanka. Following a bomb attack on a bank in Colombo, in which a neighbour was involved, the complainant and his mother were arrested by security forces on 31 January 1996, and detained at the Pettah police station. On 8 and 16 February 1996, the complainant was visited by a delegation of the International Committee of the Red Cross (ICRC) and, on 22 February 1996, he and his mother were released from detention upon payment of a bribe.

2.3 On 30 March 1996, the complainant was arrested during an identity check by an army patrol that brought him to Welikade prison, where he was interrogated about his connection with the LTTE. After his release on 1 January 1997, he was returned to Chankanai. Meanwhile, his younger brother had died, on 18 July 1996, during an LTTE attack against an army camp near Mullaitivu.

2.4 Following his return to Chankanai, the complainant and his second brother, T., were arrested six or seven times, between April and June 1997, by militia of the EPRLF[b] and TELO.[c] They were taken to a camp near Puttur, where they were interrogated about their links with the LTTE. During interrogation, they were allegedly beaten; in one case, they received blows with an iron chain and were burnt on their back with a hot piece of iron, in order to extract a confession. In July 1997, T. was once again arrested by militia; he has disappeared since.

2.5 Thereafter, the complainant returned to Colombo, from where he left for Switzerland via Turkey and Italy on 22 August 1997, using a false passport.

2.6 On 26 August 1997, the complainant applied for political asylum in Switzerland. Following interviews by the Federal Office for Refugees (BFF) on 26 August 1997 and 22 April 1998, and by the alien police on 14 October 1997, the BFF rejected his asylum application on 28 October 1998, at the same time ordering him to leave the country by 15 January 1999. The order was based on the following grounds: (a) the lack of credibility of his claims concerning his detention at Welikade prison and the alleged disappearance of his second brother, T., as well as inconsistencies in the description of his and his brother's ill-treatment at the hands of the EPRLF/TELO; (b) the absence of a sufficient link, in time and substance, between his detention at the Pettah police station from 31 January to 22 February 1996 and his departure from Sri Lanka on 22 August 1997; and (c) the absence of a sufficiently substantiated risk of torture upon return to Sri Lanka, where the complainant would be able to resettle in areas not affected by the hostilities between the parties to the conflict.

2.7 On 30 November 1998, the complainant lodged an appeal with the Swiss Asylum Review Commission (ARK) and subsequently submitted two medical reports, dated 6 January and 5 September 1999, confirming that he suffers from post-traumatic stress disorder. By submission of 10 October 1999, the BFF maintained its position, arguing that the complainant could receive adequate therapeutic treatment at the Family Rehabilitation Centre in Colombo or at one of its 12 branch offices in Sri Lanka. Moreover, it noted a contradiction between the medical report of 6 January 1999, which referred to the complainant having been detained for 14 days in Colombo prior to his arrest on 31 January 1996, and the complainant's failure to raise this point during the interviews.

2.8 On 30 November 2000, the ARK dismissed the complainant's appeal. It endorsed the findings of the BFF and added the following grounds: (a) that none of the complainant's alleged arrests resulted in criminal proceedings against him, for collaboration with the LTTE; (b) that the fact that the complainant was twice detained in Colombo was irrelevant for his asylum application; (c) that, even if the complainant suffered from post-traumatic stress disorder, he had failed to substantiate that this was the result of persecution by the Sri Lankan authorities; (d) that the complainant had failed to submit reliable documents to prove his identity; and (e) that the complainant's deportation to Sri Lanka would not constitute an unreasonable hardship, in the absence of sufficient grounds for believing that he would be subjected to torture, and given that his family continued to live in the northern Province (Tellipalai) and that adequate treatment for his post-traumatic stress disorder would be available in Sri Lanka.

2.9 The BFF thereafter set a new deadline for the complainant to leave Switzerland by 5 February 2001.

The complaint

3.1 The complainant claims that his forcible return to Sri Lanka would constitute a violation by Switzerland of article 3 of the Convention, since there are substantial grounds for believing that, as a young Tamil who was repeatedly arrested and interrogated by the authorities and militia groups, and whose brother was known to be an LTTE member, he would be subjected to torture upon return to Sri Lanka.

3.2 He submits that the Sri Lankan security forces carry out daily raids and street inspections against Tamils, who can be arrested for up to 18 months, under the Prevention of Terrorism Act (PTA) without an arrest warrant and without being informed of the charges against them. Under the Emergency Regulations (ER) supplementing the PTA, this period may repeatedly be prolonged for 90 days by a judicial commission whose decisions are not subject to appeal. During this time, detainees are frequently interrogated about their contacts with the LTTE, and are often subjected to torture, ill-treatment or even extrajudicial execution.

3.3 By reference to several reports on the human rights situation in Sri Lanka, the complainant claims that the risk of torture for Tamils has not diminished significantly in recent years.

3.4 The complainant submits that no clear distinction between governmental and non-governmental persecution, as envisaged in the Swiss Political Asylum Act, can be made in civil war situations such as in Sri Lanka, which were often characterized by either the total absence of control or its simultaneous exercise by different groups in certain areas. Thus, in certain parts of the country, Tamil militia such as the EPRLF or the TELO persecuted LTTE supporters in close cooperation with the Sri Lankan army, and frequently tortured suspects in their own prison camps. Such treatment was therefore equivalent to State persecution.

3.5 The complainant argues that because of his post-traumatic stress disorder, a sequel of his torture in the EPRLF/TELO camp, as well as his experience related to the bombing of the church in Navaly, he is likely to display uncontrolled reactions in situations of danger such as raids and street inspections, which would further increase his risk of arrest and torture by the Sri Lankan police.

3.6 The complainant claims that politically persecuted refugees are frequently without papers and that he has sufficiently proven his identity, with a photocopy of his identity card and his birth certificate. He could not be expected to obtain a passport or a new identity card by presenting himself to Sri Lankan authorities.

3.7 The complainant claims that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement, and that he has exhausted domestic remedies. In particular, he claims that an extraordinary appeal to the ARK would be futile in the absence of fresh evidence.

The State party's observations on admissibility and merits

4.1 On 8 June 2001, the State party conceded that the communication is admissible; on 29 November 2001, it submitted its observations on the merits. It endorses the arguments of the Federal Office for Refugees and the Asylum Review Commission in the complainant's case, and concludes that the complainant has failed to substantiate a real and personal risk of being subjected to torture, in the event of his return to Sri Lanka.

4.2 The State party argues that the complainant failed to submit any new elements which would justify a challenge of the decisions of the BFF and the ARK. Similarly, the evidence presented during domestic asylum proceedings (i.e. press articles, a letter from his mother and an ICRC identity card) was insufficient to substantiate his allegations of past persecution, or a future risk of torture in Sri Lanka. The medical reports confirming his post-traumatic stress disorder were based on his own account and ignored other possible, and more likely, causes for these symptoms.

4.3 While conceding that the complainant was detained at the Pettah police station in Colombo from 31 January to 22 February 1996, the State party considers this detention irrelevant for his claim that he is at risk of torture upon his return to Sri Lanka. Likewise, no such risk could be inferred from the frequent identity controls and arrests of Tamils in Sri Lanka.

4.4 The State party submits that the fact that no criminal proceedings were instituted against the complainant shows that he is not personally at risk of being tortured by the Sri Lankan security forces. For the State party, the EPRLF and TELO militia, if at all active in the Chankanai area in 1997, never showed an interest in the complainant's own activities, but allegedly tortured him to extract information about the LTTE connection of his deceased brother, S.

4.5 Lastly, the State party argues that the complainant could prove, if returned to Sri Lanka, that he lived in Switzerland from 1997 onwards, thereby dispelling any suspicion of having collaborated with the LTTE during that time.

Complainant's comments on the State party's submissions

5.1 On 22 December 2003, in his comments on the State party's merits submission, counsel argues that contradictions in the complainant's statements before the Swiss authorities resulted from a "loss of reality". Traumatized persons often experience difficulties in remembering the details and chronology of their history.

5.2 The complainant challenges that the EPRLF/TELO had no longer been active in the Chankanai region between April and June 1997, on the basis that the State party had failed to cite any verifiable reference for this contention.

5.3 The complainant rejects the State party's argument that he did not sufficiently corroborate his claims. Thus, his deceased brother's LTTE membership was a documented fact and sufficient ground for believing that the Sri Lankan authorities would hold him in suspicion. Moreover, acts of torture were generally concealed by the responsible State organs, with the result that evidence was frequently unavailable.

5.4 The complainant argues that, instead of discrediting the psychiatric reports submitted by him, the State party should have sought the medical opinion of a State examiner. While not proving his allegations, the existing reports of January and September 1999 at least confirmed that his post-traumatic stress disorder was the direct result of past experiences of torture.

5.5 Lastly, the complainant submits that numerous incidents of torture and ill-treatment in Sri Lankan prisons were reported in 2003 and that, despite ongoing peace negotiations, respect for the rule of law is still not ensured in Sri Lanka.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. In the present case, the Committee also notes that all domestic remedies have been exhausted and that the State party has conceded that the communication is admissible. It therefore considers that the communication is admissible and proceeds to its examination on the merits of the case.

6.2 The Committee must decide whether the forced return of the complainant to Sri Lanka would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In reaching its conclusion, the Committee must take into account all relevant considerations, including the existence, in the State concerned, of a consistent pattern of gross, flagrant or mass violations of human rights (article 3, paragraph 2, of the Convention).

6.3 The Committee notes from recent reports on the human rights situation in Sri Lanka that, although efforts have been made to eradicate torture, instances of torture continue to be reported, and complaints of torture are often not dealt with effectively by the police, judicial officers and doctors. However, the Committee equally notes the conclusion of a formal ceasefire agreement between the Government and the LTTE in February 2002. While recent political developments and changes in Government may have created impediments to the effective pursuit of the ongoing peace process, it remains that the process itself has not been abandoned. The Committee further recalls that, after conducting its inquiry on Sri Lanka under article 20 of the Convention, it concluded that the practice of torture was not systematic in the State party. The Committee finally notes that a large number of Tamil refugees have returned to Sri Lanka in recent years.

6.4 The Committee recalls, however, that the aim of its examination is to determine whether the complainant would personally risk torture in the country to which he would return. It follows that, irrespective of whether a consistent pattern of gross, flagrant or mass violations of human rights can be said to exist in Sri Lanka, such existence would not as such constitute sufficient grounds for determining that the complainant would be in danger of being subjected to torture upon his return to Sri Lanka. Additional grounds must be adduced to show that he would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not necessarily mean that the complainant cannot be considered to be in danger of being subjected to torture in the specific circumstances of his case.

6.5 As regards the personal risk the complainant would run to be subjected to torture at the hand of the Sri Lankan security forces, the Committee has noted his claim that he was tortured, in 1997, by the EPRLF and TELO, which had operated in cooperation with the Sri Lankan army. Even if these allegations were assumed to be true, the Committee considers that it does not necessarily follow that the complainant would presently be at risk of being subjected to torture again, given the ongoing peace process in Sri Lanka and the fact that many Tamil refugees have returned to that country in recent years.

6.6 Insofar as the complainant argues that his post-traumatic stress disorder would result in uncontrolled reactions in stressful situations, thereby increasing the risk of his arrest by the Sri Lankan police, the Committee observes that the absence of any criminal proceedings against the complainant in the past, as well as his low political profile, can in turn be adduced as factors likely to lower any risk of serious consequences, should he be arrested again.

6.7 The Committee considers it unlikely that the Sri Lankan authorities, or the militia groups allegedly acting with their consent or acquiescence, remain interested in the LTTE involvement of the complainant's younger brother, who died almost eight years ago.

6.8 With regard to the question of whether the complainant would be able to receive adequate psychiatric treatment for his post-traumatic stress disorder in Sri Lanka, the Committee recalls that the aggravation of the complainant's state of health possibly resulting from his deportation to Sri Lanka would not amount to torture within the meaning of article 3, read in conjunction with article 1 of the Convention, which could be attributed to the State party itself.

6.9 The Committee therefore is of the view that the complainant has not adduced sufficient grounds which would lead the Committee to conclude that he would run a substantial, present and personal risk of torture if returned to Sri Lanka.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, concludes that the complainant's removal to Sri Lanka by the State party would not constitute a breach of article 3 of the Convention.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

Notes

[a] Liberation Tigers of Tamil Eelam.

[b] Eelam People's Revolutionary Liberation Front.

[c] Tamil Eelam Liberation Organization.

Communication No. 183/2001

Submitted by:	B.S.S. (represented by counsel, Mr. Stewart Istvanffy)
Alleged victim:	B.S.S.
State party:	Canada
Date of complaint:	7 March 2001

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 May 2004,

Having concluded its consideration of complaint No. 183/2001, submitted to the Committee against Torture by Mr. B.S.S. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. B.S.S., an Indian national, born in 1958, currently residing in Québec, Canada and awaiting deportation to India. He claims that his forcible return to India would constitute a violation by Canada of articles 3 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 4 May 2001, the Committee forwarded the complaint to the State party for comments and requested, under rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant to India while his complaint was under consideration by the Committee. On 19 February 2004, the State party requested the Committee to withdraw its request for interim measures, pursuant to rule 108, paragraph 7, of the Committee's rules of procedure or, alternatively, to make a final determination on the complaint at its earliest convenience. By letter of 2 March 2004, counsel asked the Committee to maintain its request for interim measures, pending a final decision on the complaint. These requests became moot on 12 May 2004, when the Committee adopted its Views on the complaint.

1.3 On 31 March 2003, the complainant requested the Committee to suspend the consideration of his complaint, pending the outcome of legal proceedings under a new Pre-Removal Risk Assessment (PRRA) procedure, but to maintain its request under rule 108, paragraph 1, of its rules of procedure. On 25 April 2003, the Committee informed the complainant and the State party that it had decided to suspend consideration of the complaint, as well as its request to the State party not to expel the complainant, insofar and as long as his removal would be automatically stayed under section 162 of the Immigration and Refugee Protection Regulations.

The facts as submitted by the complainant

2.1 The complainant is from the Punjab province in India. His religion is Sikh. His wife and three children continue to live in the Punjab.

2.2 According to an "investigation report" dated 12 March 1993 by Mr. S.S., a human rights lawyer at Patiala (Punjab), which substantially relies on the testimony of the complainant's father, his daughter and other villagers, two armed men came to the home of the complainant's family in April 1991 asking the complainant for food while pointing a gun at him. They remained for half an hour. Later that night, the police arrested the complainant accusing him of harbouring terrorists. He was allegedly detained in a special torture cell where he was interrogated and beaten by the police. He was released after two days when his father paid a bribe.

2.3 Pursuant to the same report, the complainant was arrested a second time in September 1991 after six family members of a police officer had been killed in a nearby village. The complainant was detained in an unknown place where he was allegedly subjected to torture by the police again. He was released at the intervention of a local politician and subsequently went to Jaipur (Rajasthan) in order to hide from the Punjab police. The police reportedly continued to harass his family, and on one occasion arrested the complainant's brother. When the police started to investigate his whereabouts in Jaipur, the complainant decided to leave the country following his father's advice.

2.4 On 1 September 1992, the complainant left India for Brazil, then travelled to Mexico, and entered the United States on 22 September 1992. On 30 October 1992, he entered Canada and applied for refugee status. When he was returned to the United States, the United States immigration authorities asked him to leave the country before 29 November 1992. The complainant subsequently remained illegally within the United States. He failed to report for an examination of his refugee application which was scheduled for 17 August 1993 at the Canadian border post at Lacolle.

2.5 On 24 November 1993, the Indian Consulate in New York issued a passport for the complainant.

2.6 The complainant re-entered Canada on 4 August 1994 at Vancouver and made a new refugee claim in Montreal on 16 August 1994. On 13 October 1994, a removal order was issued against him by the Canadian immigration authorities. He was refused Convention refugee status by the Convention Refugee Determination Division of the Immigration and Refugee Board on 4 November 1996, but applied for leave to apply for judicial review of that decision. Leave was denied by the Federal Court of Canada on 29 May 1998.

2.7 In the meantime, the complainant filed an application in the Post-Determination Refugee Claimants in Canada (PDRCC) class. Together with that application he submitted a copy of a document resembling a warrant for arrest which, according to that document, had been issued against him by the Indian authorities on 8 May 1994. His application was rejected by letter of 10 March 1997 informing him that the removal order had become effective and that he had to leave Canada before 16 April 1997. The post-claim determination officer's notes to the file state that the copy of the arrest warrant had only been provided at a late stage of the proceedings and that no explanation was given as to why the arrest warrant had been issued in 1994 purportedly for events dating back to 1991. The complainant's request for leave to apply for judicial review of the decision rejecting his application was denied by the Canadian Federal Court on 29 August 1997.

2.8 On 2 October 1997, the complainant applied for an exemption from the regular application of the *Immigration and Refugee Protection Act*[a] on the basis of humanitarian and compassionate grounds. The application contained new evidence including an article, dated 10 August 1997, from a Chandigarh (Punjab) newspaper stating that the complainant's family was still being harassed by the Punjab police and that his life would be at risk if he were returned to India; a medical report, dated 25 April 1995, from an Indian doctor confirming that he had treated the complainant for a fractured leg and a bleeding ear on 21 September 1991; and a medical report, dated 14 March 1995, from a Montreal doctor certifying a hearing defect on the complainant's right ear as well as a 3 cm scar on his right leg and concluding that these symptoms were concordant with his allegations of torture. The complainant's humanitarian and compassionate application was denied on 4 November 1997. However, during the examination of the complainant's request for leave to apply for judicial review of that decision, it became apparent that the immigration officer had not considered all the evidence before him. The State party agreed to reconsider the humanitarian and compassionate application, and the court proceedings were discontinued.

2.9 On 4 June 1998, another immigration officer made a further risk assessment and, despite new evidence, concluded that the complainant would not be at risk of torture or inhumane treatment if returned to India. By letter, dated 13 August 1998, the complainant was advised that his second humanitarian and compassionate application had also been rejected. He filed an application for leave to apply for judicial review which was granted by the Federal Court.

2.10 By decision of 2 October 1998, the Federal Court ordered a stay of execution of the removal order. The Court held that the complainant had raised a serious issue to be tried and determined, on an interlocutory basis, that he would suffer irreparable harm if deported to India. By decision of 24 November 1998, the Federal Court granted the application for judicial review setting aside the decision of the immigration officer rejecting the complainant's second humanitarian and compassionate application and referring the matter back for reconsideration. Although the Court rejected the complainant's claim that the immigration review scheme in Canada was in violation of articles 7[b] and 12[c] of the Canadian Constitution, it held that the immigration officer's decision was unreasonable since it failed to give due weight to new evidence presented by the complainant and because it relied on irrelevant considerations.

2.11 The complainant's humanitarian and compassionate application was subsequently reviewed by another immigration officer who was also trained as a post-claim determination officer and, after a lengthy analysis of the facts and evidence, refused the application on 13 October 2000, based on, inter alia, the following considerations: (a) doubts about the authenticity of the arrest warrant given its form and the absence of any corroborating evidence; (b) the lack of an identifiable source and/or the outdatedness of most of the reports and newspaper articles submitted by the complainant on the situation in Punjab; (c) the contradiction between the fact that, according to the testimony of his family and neighbours in his home village, the complainant was innocent and his claim of still being persecuted by the police; (d) doubts as to the evidentiary value of the translation of a newspaper article, dated 11 June, from a Vancouver weekly published in Punjabi language citing the case of the complainant; (e) the complainant's unexcused failure to report for the examination of his first refugee claim which was scheduled for 17 August 1993 at the Canadian border post; (f) the fact that the complainant had been issued a passport by the Indian consulate in New York on 24 November 1993, although he was allegedly being sought by the Indian authorities; (g) the fact that counsel raised the issue of the complainant's post-traumatic stress disorder accompanied by panic attacks, as diagnosed in a psychiatric report dated 30 August 1999, at a late stage of the proceedings, that his psychological condition had not prevented the complainant from working since January 1999, and that he had denied any mental disorder when completing immigration documents in October 1997 and in September 2000; (h) the complainant's low political profile and the fact that generally only human rights activists or Sikh militants and their respective families were in danger of being harassed by the Punjabi police;[d] (i) the fact that the complainant's family continues to live in the Punjab; (j) the complainant's protection by virtue of his father's good political connections; (k) the general improvement of the situation in the Punjab; and (l) the fact that the complainant was able to find a safe haven in the neighbouring province prior to his departure from India in 1991.

2.12 The complainant's request for leave to apply for judicial review was denied by the Federal Court on 2 March 2001.

The complaint

3.1 Counsel claims that the complainant would be at a risk of torture in India and, therefore, Canada would be violating article 3 of the Convention if he were to be returned to that country. Moreover, owing to the complainant's post-traumatic stress disorder, he would be subject to severe emotional trauma upon return to India without the possibility of obtaining appropriate medical treatment, which in itself would constitute inhuman and degrading treatment, in violation of article 16 of the Convention.

3.2 Counsel also claims that the complainant has exhausted all domestic remedies. He further submits that remedies in the Canadian immigration review scheme are ineffective since immigration officers are not trained in human rights or in legal matters, in most cases fail to take into account the jurisprudence of the Immigration and Refugee Board and of the Federal Court or realistically to assess the situation in the refugee claimants' country of origin, are frequently exposed to pressure to produce high deportation numbers and generally show mistrust towards allegations made by refugee claimants.

State party's observations on admissibility and merits

4.1 On 8 November 2001, the State party submitted its observations on the admissibility and, subsidiarily, on the merits of the complaint.

4.2 The State party concedes that the complainant has exhausted all available domestic remedies. However, the State party submits that the complaint is inadmissible because the evidence presented by him is insufficient to establish a prima facie violation of the Convention.

4.3 With regard to article 3 of the Convention, the State party submits that, pursuant to general comment No. 1, this provision places the burden upon the complainant to establish that he would be at risk of being tortured if returned to India. According to the State party, the complainant's behaviour after his departure from India in 1992 is inconsistent with his alleged fear of torture, as reflected by his failure to apply for refugee status in the United States while he was living in that country, his failure to report for the examination of his first refugee claim by the Canadian authorities on 17 August 1993, as well as the renewal of his Indian passport in New York in 1993 which, in the State party's view, constitutes further evidence that the complainant does not fear Indian authorities and that he was not and is not being sought by them.[e] Furthermore, the State party questions the credibility of the complainant because of the dubious authenticity of the arrest warrant against him which had been issued two years after his departure from India, was not supplied to the Canadian authorities before December 1996, was typewritten lacking an official letterhead, and belonged to the type of documents which could be easily forged or obtained for a small fee in India.

4.4 The State party also submits that the medical reports supplied by the complainant merely confirm the existence of past injuries without providing evidence of the cause of these injuries. Doubts are also raised by the State party with regard to the psychiatric report diagnosing post-traumatic stress disorder which the complainant had never mentioned prior to 1999. The State party concludes that, even if these reports corroborated the complainant's allegation that he had been tortured in the past, this did not occur in the recent past, the decisive issue being whether a risk of torture continued to exist. With reference to the Committee's jurisprudence,[f] the State party submits that even though past torture is an element to be considered when examining claims under article 3, the aim of the Committee's examination is to find whether the complainant would currently run a risk of torture, if returned to the country of origin.

4.5 Based on several reports on the human rights situation in India and, in particular, in the Punjab, the State party submits that there is no consistent pattern of gross, flagrant or mass violations of human rights in Punjab and that the situation in that province has improved over the past years as shown by the substantial decrease of both Sikh militarism as well as the targeting of Sikhs by the police. The State party doubts that the complainant was ever personally targeted by the police, suggesting that his alleged detention formed part of a past practice of false arrest by the Punjabi police with a view of obtaining a bribe. The State party further argues that only known Sikh militants or activists may still be considered at risk of being maltreated; the complainant, however, had never been a member of any political party or social movement.[g] Taking into account that the Committee had even rejected an article 3 claim by a high-profile Sikh militant who had been involved in the hijacking of an Indian Airlines airplane in 1981,[h] the State party finds that torture cannot, in the circumstances of the present case, be considered a foreseeable and necessary consequence of the complainant's return to India.

4.6 With regard to the alleged violation of article 16 of the Convention, the State party argues that this provision does not apply to the complainant's situation because it follows from the *travaux préparatoires* of the Convention that issues of deportation or expulsion are exhaustively dealt with by article 3. The State party also submits that, according to the Committee's jurisprudence, "aggravation of the author's state of health possibly caused by [...] deportation would not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16 of the Convention, attributable to the State party".[i] Since the inability of a State to provide the best medical care does not, in the view of the State party, constitute cruel, inhuman or degrading treatment, the return of the complainant to India cannot constitute such treatment either, even if his claim regarding the lack of appropriate medical treatment in India were substantiated.

4.7 In the alternative, if the complaint should be declared admissible, the State party requests the Committee to dismiss it on the merits, based on the same reasons as set out above.

4.8 With respect to the risk assessment by the Canadian immigration authorities, the State party submits that immigration officers are specially trained to assess the situation in the country of origin of refugee claimants and to apply domestic Canadian as well as human rights law including the Convention against Torture. The State party considers the remedy of judicial review an adequate safeguard for the immigration officers' "relative lack of independence".

4.9 Lastly, the State party argues that the Committee should not substitute its own finding on whether there were substantial grounds for believing that the complainant would be at risk of being tortured if returned to India, since the national proceedings before the immigration and Refugee Board, as well as the Federal Court, do not disclose a manifest error or unreasonableness or any other irregularity, the evaluation of facts and evidence being a matter reserved to the national courts.

Complainant's comments

5.1 In his comments dated 30 March 2002 on the State party's submission, the complainant reiterates that he would run a risk of being tortured, or even executed, if he were to be returned to India. He submits that some of the evidence supplied by the complainant was entirely ignored or belittled in the State party's submission, such as the investigation report by Mr. S.S., several newspaper articles and the *Chahal* judgement of the European Court of Human Rights, while other documents, in particular the arrest warrant and the article from the Vancouver weekly which explicitly mentioned the complainant, were not recognized as being authentic. Since all documents had been submitted in original to the Canadian authorities, it would have been easy for the State party to verify their authenticity.

5.2 The complainant submits that the State party seeks to undermine his credibility on secondary grounds, such as his delay in making a refugee claim, his failure to claim refugee status in the United States, the fact that he was issued a passport by the Indian consulate in New York, and the date of his arrest warrant, which are insufficient to refute the well-documented risk of torture in this case. Counsel submits that the complainant, in order to obtain a document to prove his identity, paid $500 to a Mr. S. to collect his passport at the Indian consulate in New York. With regard to the date of the arrest warrant, the complainant states that he does not know why it had been issued two years after his departure from India and that a possible explanation may lie in events in the Punjab of which he is not aware.

5.3 With respect to the medical and psychological reports, the complainant submits that these documents clearly establish he had been tortured, a fact which has never been seriously denied by the State party. The complainant denies the State party's allegation that the reports were only presented at a late stage of the proceedings, explaining that at least the 1995 medical report had been supplied to the Canadian authorities at an earlier stage.

5.4 As further evidence, the complainant submits an affidavit by Mr. S.S.S., a friend and former officer of the Indian army who, subsequent to his dismissal from the army, became a Sikh activist, fled the country and was granted Convention refugee status in Canada in 1993. In the affidavit, he states that he met the complainant's family several times during a four-month visit to India in 1997 when he was told that the Punjabi police continued to harass the family and suspected the complainant of having contacts with terrorists abroad.

5.5 The complainant argues that the State party's submissions, in substantial part, merely repeat the arguments stated in the immigration officer's final decision, dated 13 October 2000, without explaining why the conclusion in two decisions of the Federal Court, that the complainant's deportation to India would expose him to a risk of irreparable harm, was disregarded in that decision. With regard to the denial of leave to apply for judicial review, counsel explains that judicial review was denied by a new judge who had just joined the Federal Court in March 2001.

5.6 According to the complainant, his risk of being tortured upon return to India is increased by the fact that he is perceived as a militant sympathizer since the Punjabi police has accused him of supporting Sikh militants. Moreover, his poor physical condition would add to the security forces' belief that he was involved in the armed struggle.

5.7 With respect to current human rights violations in India and, in particular, in Punjab, the complainant states that even though the situation has improved in comparison to the early nineties, torture in police and military custody is still widespread. In support of this claim, he submits several voluminous reports on continuing human rights violations in Punjab as well as on the Canadian refugee determination system.

5.8 With regard to the alleged violation of article 16 of the Convention, the complainant submits that this claim is not merely based on the lack of appropriate medical treatment in India, but also on the traumatic experience of returning to the country where he had been subjected to torture.

5.9 The complainant maintains that Canadian immigration officers are generally not trained in human rights. Instead, they receive training on how to challenge the credibility of a refugee claimant. The complainant also reiterates that judicial review by the Federal Court constitutes an insufficient control over abuses by the immigration authorities, and cites the present case as an example for the inadequacy of that remedy.

State party's additional observations and counsel's comments

6.1 In an additional submission of 12 November 2002, the State party argued that, apart from being unsubstantiated, the complaint was also inadmissible under article 22, paragraph 2, as incompatible with article 3 of the Convention, since no decision to remove the author had been taken at that stage, as well as under article 22, paragraph 5 (b), of the Convention and rule 107 (e), of the Committee's rules of procedure, because the complaint had not exhausted remedies under the new Pre-Removal Risk Assessment (PRRA) procedure. Subsidiarily, the State party maintains that the complaint is without merit.

6.2 The State party submits that, under the new Immigration and Refugee Protection Act of 28 June 2002, any person awaiting removal from Canada is entitled to a further risk assessment, based on fresh evidence, which automatically stays the removal order, if submitted within 15 days of the notification informing the applicant of the possibility to apply for PRRA protection. The assessment is conducted by a PRRA officer trained to apply the Geneva Convention relating to the Status of Refugees, as well as the Convention against Torture. In case of a negative PRRA determination, the applicant may apply for leave to apply for judicial review to the Federal Court, which can grant relief on grounds of a simple error of law or manifestly erroneous findings of fact. A decision of the Federal Court Trial Division can be appealed to the

Federal Court of Appeal, if the judge of the Trial Division certifies that the case raises a serious question of general importance. The Appeal Court's decision is subject to further appeal to the Supreme Court of Canada. The applicant can apply to the Federal Court for an interim order staying removal pending the outcome of his applications and appeals before that Court.

6.3 The State party contends that, like the PDRCC risk assessment in the former legislation, the Pre-Removal Risk Assessment constitutes an effective remedy;[j] the same has been held by the Committee against Torture and the Human Rights Committee with respect to the remedy of judicial review.[k]

6.4 In addition, the State party rejects the complainant's argument that the Federal Court twice acknowledged his risk of being tortured upon return to India, arguing that the stay order of 2 October 1998 and the decision of 24 November 1999 on one of his applications for judicial review cannot be considered judicial findings of fact that the author would be at such a risk.

6.5 The State party challenges the documentary evidence produced by the author, on the basis (a) that the affidavit of Mr. S.S.S., who was able to spend four months in the Punjab in 1997 despite the fact that he had been granted refugee status in Canada, was merely based on statements of the complainant's family and friends in the Punjab and was as such self-serving and of little weight; (b) that the reports and studies on past human rights violations in the Punjab are insufficient to make out a personal and present risk of torture for the complainant, should he be deported to India; and (c) that the two medical reports of 1995 only referred to previous physical injuries, without making reference to post-traumatic stress disorder, which had been mentioned for the first time in the 1999 report, five years after the complainant made his refugee claim.

7.1 In comments dated 31 March 2003 the complainant reiterates that he would be at a personal and present risk of torture in India, as confirmed by the Federal Court decisions stating that he "would suffer irreparable harm" (staying order of 2 October 1998) or "endure unusual, undeserved or disproportionate hardship" (judgement of 24 November 1999), if returned to that country.

7.2 The complainant denies that Canada's international human rights obligations are taken into account in the PRRA decision-making process, as this procedure was designed to refuse refugee status to "practically everybody", the denial rate totalling between 97 and 98 per cent of all applicants.

State party's further submissions and counsel's comments

8.1 On 19 February 2004, the State party informed the Committee that the complainant's PRRA had been concluded and requested it to lift its suspension of the consideration of the case, to adopt a decision on the admissibility and merits of the complaint as expeditiously as possible or, alternatively, to withdraw its request for interim measures, in accordance with rule 108, paragraph 7, of its rules of procedure.

8.2 The State party argues that the evidence produced by the complainant does not support a finding that, as a result of his removal, he would suffer "irreparable damage" within the meaning of rule 108, paragraph 1, of the rules of procedure, given his low personal profile, the fact that his alleged torture occurred more than 12 years ago, and that the human rights situation in the

Punjab region has significantly improved during the 11 years following his departure. The absence of a risk of torture had been confirmed in four subsequent risk assessments conducted by four different officers; mere conjecture on the part of the complainant should not restrain the implementation of a removal decision that has been lawfully taken.

8.3 The State party submits that, on 14 May 2003, the complainant filed an application for permanent residence based on humanitarian and compassionate grounds and, on 10 September 2003, he also applied for a pre-removal risk assessment. Both applications were based on the same allegations as his initial refugee claim and the subsequent applications for protection. On 29 September 2003, the PRRA officer rejected the complainant's PRRA application, and ordered his immediate removal, determining that he would not be subject to risk of persecution, torture, risk of life or risk of cruel and unusual treatment or punishment if returned to India. Similarly, his humanitarian and compassionate application was denied on 30 September 2003, in the absence of a sufficiently substantiated risk of persecution.

8.4 The State party submits that, in the interest of finally disposing of the matter, it no longer contests the admissibility of the complaint on the basis of non-exhaustion of domestic remedies, although the complainant's application for leave to apply for judicial review was still pending before the Federal Court.

9.1 On 2 March 2004, the complainant submitted copies of the file relating to his PRRA proceedings and, on 20 April 2004, commented on the State party's further submissions. The evidence contained in the file includes (a) several reports on the human rights situation in Punjab, including a January 2003 Amnesty International report on impunity and torture in Punjab,[1] identifying the failure to bring to justice police officers responsible for torture, deaths in custody, extrajudicial executions and disappearances during the militancy period from the mid-1980s to the mid-1990s as one of the reasons for the continuation of serious human rights violations; (b) several affidavits confirming the complainant's risk, including by a refugee and former human rights lawyer from Punjab now practising law in Canada, who states that someone believed to have any contacts with militants, as the complainant, would be targeted by the police and unable to obtain court protection in Punjab; (c) a translation of a resolution dated 27 August 2003 adopted by the municipal council (*panchayat*) of the complainant's village, confirming that his life would be at risk upon return and criticizing the harassment of his family by the local police; (d) a letter dated 3 October 2003 from Mr. S.S. to the same effect; and (e) a letter dated 10 April 2004 from the complainant's son, stating that his family suffers from constant harassment by the Criminal Investigation Department (CID), as well as the resulting social isolation, and that he fears for his life.

9.2 Counsel summarizes the chronology of the complainant's legal recourses in Canada and informs the Committee that the Federal Court dismissed his application for leave to apply for judicial review on 17 February 2004. He submits that, similar to the former PDRCC procedure, which was constantly criticized by the churches and refugee support groups in Canada, the PRRA procedure is considered to lack independence and impartiality by the Canadian Bar Association and human rights groups, its only purpose being to pretend that the State has assessed the danger before deporting an applicant. Neither the Committee against Torture nor the Human Rights Committee found this procedure to be an effective remedy; they only observed that it must be exhausted or that its ineffectiveness must be shown by a complainant.

9.3 The complainant challenges his pre-removal risk assessment on the following grounds: (a) the decision only focuses on events which occurred prior to his departure from India, but fails to consider the ongoing harassment of his family as well as the new evidence produced by him and the two Federal Court decisions of October 1998 and November 1999; (b) it erroneously states that arbitrary arrests of suspected Sikh militants or sympathizers have ceased in Punjab, contrary to reports of the Danish Immigration Service and the United Kingdom country assessment of India; and (c) it is based on the false assumption that an internal flight alternative exists in India, while human rights observers consider it impossible for a person targeted by the police to lead a normal life in India, since all new arrivals must register with the local police station and because neighbours will tell the police about any newcomer.

9.4 The complainant denies that the human rights situation in the Punjab has improved in the recent past; rather, the general incidence of torture has increased, according to Amnesty International. The Canadian Centre for Victims of Torture in Toronto and the *Réseau pour les victimes de violence organisée* in Montreal confirmed that they continue to receive victims of serious torture from that region. Following the rise to power of the Congress party in Punjab in 2002, all police officers facing charges of torture and abuse were amnestied. New anti-terrorist legislation has further weakened the position of torture victims. The argument that only high profile Sikh militants are at risk in Punjab is rejected by most observers and contradicted by reports that, in many cases, previously targeted persons or their families are still being targeted.

Issues and proceedings before the Committee

10.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes that the State party concedes that domestic remedies have been exhausted. Thus, the question whether the legal remedies available under the Canadian immigration review scheme are ineffective, as alleged by counsel, does not arise in the concept of admissibility.

10.2 With regard to the complainant's allegation that the decision to return him to India would in itself constitute an act of cruel, inhuman or degrading treatment or punishment in contravention of article 16 of the Convention, the Committee notes that the complainant has not submitted sufficient evidence in substantiation of this claim. In particular, the Committee recalls that, according to its jurisprudence, the aggravation of the complainant's state of health possibly caused by his deportation does not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16 of the Convention.[9] Although the Committee recognizes that the complainant's deportation to India may give rise to subjective fears, this does not, in the Committee's view, amount to cruel, inhuman or degrading treatment, as envisaged by article 16 of the Convention. The Committee therefore observes that the complainant's claim under article 16 of the Convention lacks the minimum substantiation that would render this part of the complaint admissible under article 22 of the Convention.

10.3 With respect to the complainant's claim under article 3, paragraph 1, of the Convention, the Committee finds that no further obstacles to the admissibility of the complaint exist. The Committee accordingly proceeds with the consideration of the merits.

11.1 The Committee must evaluate whether there are substantial grounds for believing that the author would be personally in danger of being subjected to torture upon return to India. In assessing the risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights.

11.2 In this regard, the Committee takes note of the reports submitted by the complainant, confirming that incidents of torture in police custody have continued after the end of the militancy period in Punjab in the mid-1990s, and that perpetrators have not been brought to justice in most cases. It also notes the State party's argument that the human rights situation in the Punjab has improved during the 11 years following the complainant's departure from India.

11.3 However, the Committee recalls that the aim of the determination is to establish whether the complainant would be personally at risk of being subjected to torture in India. It follows that, even if a consistent pattern of gross, flagrant or mass violations of human rights could be said to exist in that country, such a finding would not as such constitute a sufficient ground for determining that the complainant would be in danger of being subjected to torture upon his return to India; additional grounds must exist to show that he would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

11.4 The Committee notes that the complainant submitted evidence in support of his claim that he was tortured during his detention in 1991, including medical and psychiatric reports, as well as written testimony corroborating this allegation. However, the Committee considers that, even if it were assumed that the complainant was tortured by the Punjabi police, it does not automatically follow that, 13 years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to India.

11.5 Insofar as the complainant claims that he currently remains at risk of being tortured in India, the Committee notes that, while confirming the risk of him being subjected to torture, as well as his family's continuing harassment, by the Punjabi police, the evidence produced by the complainant, including affidavits, letters and a document which is said to contain a resolution adopted by the municipal council of his home village, merely refers to his risk of being tortured *in Punjab*. The Committee considers that the complainant has failed to substantiate that he would be unable to lead a life free of torture in another part of India. Although resettlement outside Punjab would constitute a considerable hardship for the complainant, the mere fact that he may not be able to return to his family and his home village does not as such amount to torture within the meaning of article 3, read in conjunction with article 1, of the Convention.

11.6 Regarding the effectiveness of judicial remedies available under the Canadian immigration review scheme, the Committee notes that the final decision on the complainant's deportation was taken after a lengthy and detailed assessment of the risk of returning the complainant to India, in four subsequent proceedings. The Committee also observes that, prior to that decision, the State party agreed to review the complainant's humanitarian and compassionate application when it became apparent that the evidence submitted by him had not been duly considered. Similarly, the Committee takes note of the fact that the Federal Court did not hesitate to refer the case back for reconsideration on the basis that the reviewed decision on the complainant's humanitarian and compassionate application also lacked an appropriate evaluation of the evidence.

11.8 In the light of the foregoing, the Committee concludes that the complainant has failed to establish a personal, present and foreseeable risk of being tortured if he were to be returned to India.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the State party's decision to return the complainant to India would not constitute a breach of article 3 of the Convention.

Notes

[a] The Act was amended on 1 November 2001.

[b] "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

[c] "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment."

[d] For that reason, the *notes au dossier* denied any similarity with the *Chahal v. United Kingdom* case in which the European Court of Human Rights decided that the deportation of a well known supporter of Sikh separatism to India would constitute a violation of article 3 of the European Convention since his involvement in the Sikh separatist movement "would be likely to make him a target of interest for hard-line elements in the security forces who have relentlessly pursued suspected Sikh militants in the past". See European Court of Human Rights, *Chahal v. United Kingdom* (application No. 00022414/93), judgement of 15 November 1996, paras. 98 and 106-108 (citation at para. 106).

[e] Reference is made by the State party to the Committee's decision in *E.A. v. Switzerland*, communication No. 28/1995 (CAT/C/19/D/28/1995), 10 November 1997, para. 11.4.

[f] *X, Y and Z v. Sweden*, communication No. 61/1996 (CAT/C/20/D/61/1996), 6 May 1998, para. 11.2; *A.L.N. v. Switzerland*, communication No. 90/1997 (CAT/C/20/D/90/1997), 19 May 1998, para. 8.3.

[g] The State party points to the pertinent jurisprudence of the Committee to support this argument. See e.g. *P.Q.L. v. Canada*, communication No. 57/1996 (CAT/C/19/D/57/1996), 17 November 1997, para. 10.4.

[h] *T.P.S. v. Canada*, communication No. 99/1997 (CAT/C/24/D/99/1997), 4 September 2000, para. 15.5.

[i] *G.R.B. v. Sweden*, communication No. 83/1997 (CAT/C/20/D/83/1997), 15 May 1998, para. 6.7.

[j] In relation to the PDRCC risk assessment, the State party cites the Human Rights Committee's decisions on communication No. 603/1994, *Badu v. Canada*, at para. 6.2; communication No. 604/1994, *Nartey v. Canada*, at para. 6.2; communication No. 654/1995, *Adu v. Canada*, at para. 6.2.

[k] Apart from the above-cited decisions of the Human Rights Committee, reference is made to the decisions of the Committee against Torture on complaints No. 66/1997, *P.S.S. v. Canada*, at para. 6.2; No. 86/1997, *P.S. v. Canada*, at para. 6.2; No. 42/1996, *R.K. v. Canada*, at para. 7.2; No. 95/1997, *L.O. v. Canada*, at para. 6.5; No. 22/1995, *M.A. v. Canada*, at para. 3.

[l] AI Index ASA 20/002/2003.

[m] The letter is enclosed with the complainant's submission of 20 April 2004.

[n] Copy of the decision is included in the complainant's submission of 2 March 2004.

[o] *G.R.B. v. Sweden*, communication No. 83/1997 (CAT/C/20/D/83/1997), 15 May 1998, para. 6.7.

Communication No. 186/2001

Submitted by : K.K. (represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 3 July 2001 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 November 2003,

Having concluded its consideration of complaint No. 186/2001, submitted to the Committee against Torture by Mr. K.K. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is K.K., a Sri Lankan national of Tamil origin, born in 1976, currently detained in Zug (Switzerland), awaiting his deportation to Sri Lanka. He claims that his forcible return to Sri Lanka would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 8 August 2001, the Committee forwarded the complaint to the State party for comments and requested, under rule 108, paragraph 1, of the Committee's rules of procedure, not to return the complainant to Sri Lanka while his complaint was under consideration by the Committee. The State party acceded to this request.

The facts as submitted

2.1 The complainant is from Jaffna in the north of Sri Lanka. When his parents' house was bombed by the Sri Lankan army in October 1995, he and his family fled to the then LTTE[a]-controlled city of Killinochi, from where he left for Colombo in May 1996, together with his mother. On their way to Colombo, he was separated from his mother and arrested, at a checkpoint of the Sri Lankan army and the Eelam People's Revolutionary Liberation Front (EPRLF) near Vavuniya, together with several other Tamil men suspected of LTTE-membership.

2.2 The complainant was subsequently detained in a room of a school from where he was brought to the Criminal Investigation Department (CID) in Thandikulam for interrogations about his LTTE connection. During that time, he was allegedly tortured by Tamil members of the EPRLF who burned his genitals with cigarettes, while he was naked with his hands tied behind his back. The complainant also received blows with a rod and was threatened with execution if he refused to admit his LTTE-membership. During detention, he was only given sandy rice to eat and smelly water, or urine, to drink. After 12 days, the complainant was released because of repeated interventions of his mother and because a remote relative from Colombo, Mr. J.S., had provided guarantees for him.

2.3 Shortly after his arrival in Colombo, where he stayed in a [Tamil] lodge, the complainant was arrested and handed over by the army to the police. The following day, he was brought before a judge who, by decision of 2 August 1996, acquitted him of all charges of terrorist activity, for lack of evidence. Despite his acquittal, he was kept in detention at the CID, in a cell occupied by Singhalese drug addicts and alcoholics who allegedly beat him. After one week, he was brought before court again, where he managed to secure his release with the assistance of a lawyer.

2.4 Shortly thereafter, the complainant was again arrested by the CID on grounds of being a suspected LTTE activist. At the CID office in Boralle, he allegedly was given half an hour to confess his LTTE-membership, failing which the CID officer threatened to execute him. During his subsequent interrogation with two other suspects, Mr. J.S. and his sister, K.S., the complainant received blows on his head with a sand-filled plastic pipe ("S'Lon Pipe"). He was then detained at the CID building for seven days until he was released, together with the two other suspects, after they had paid 15,000 rupees as a bribe.

2.5 In September 1996, the complainant was again arrested by the CID, after a bomb attack on a train in Dehiwala, Colombo, and after weapons and explosives had been found next to the house of his relatives and co-suspects, J.S. and K.S. During detention, where he was allegedly beaten, forced to exhibit his genitals and given poor food, the complainant was twice visited by delegates of the International Committee of the Red Cross (9 and 19 September 1996). When the police arrested the real perpetrator of the bomb blast, he was released after 22 days' detention, together with Mr. and Ms. Selvarasa, after his mother had paid a bribe of 45,000 rupees. He was told to leave Colombo within one month.

2.6 On 29 October 1996, the complainant left Sri Lanka using a false passport. He arrived in Switzerland on 30 October 1996, where he applied for asylum the same day. After two hearings by the Federal Office for Refugees (BFF) on 14 November 1996 and 6 March 1997, and one hearing by the immigration police in Zug on 9 December 1996, the Federal Office rejected his asylum application by decision of 23 October 1998, at the same time ordering his deportation to Sri Lanka. While considering documents submitted by the complainant as evidence[b] as being authentic, the BFF observed that several contradictions in his statements undermined his credibility. In particular, while he had told the immigration police in Zug that the ICRC delegates had visited him during his second detention in Colombo, he stated during his second hearing by the BFF that he had received these visits during his third and final detention in Colombo. This incoherence, which he could not explain, raised doubts as to whether he had actually been detained three times in Colombo. His statement during the second BFF hearing that he had left Colombo only 12 days after his final release from detention was considered unrealistic, thereby further undermining his credibility. Moreover, the fact that the complainant had been acquitted by a Sri Lankan court and released from police detention several times indicated that he was at no real risk of persecution. The instances of torture alleged by him could not be attributed to the Sri Lankan Government, which had made considerable efforts to improve the domestic human rights situation, but constituted abuses of authority by individual policemen. The medical problems claimed by the complainant (problems to urinate, stomach ache, loss of memory) had not affected his ability to travel.

2.7 On 24 November 1998, the complainant appealed the decision of the BFF to the Swiss Asylum Review Commission (*Asylrekurskommission*), arguing that the apparent contradictions about the timing of the ICRC visits resulted from a misunderstanding, since he had referred to his second arrest by the CID rather than his second detention in Colombo during his second BFF hearing. As to the short time for organizing his departure from Colombo, he claimed that this journey had been planned by his mother and uncle well before his final release from detention, after they had come to the conclusion that he was no longer safe in Sri Lanka. Furthermore, the complainant denied that acts of torture by individual members of the police could not be attributed to the Government and that the human rights situation had considerably improved in Sri Lanka. The fact that he had been arrested and tortured subsequent to his acquittal by court only showed that the acquittal did not protect him from being arrested and tortured.

2.8 Subsequently, the complainant submitted two medical reports, one dated 7 December 1998, stating that his genitals displayed four burns likely to have been caused by cigarettes, and one psychiatric report dated 17 January 1999, confirming that he displayed clear symptoms of post-traumatic stress disorder. By submission of 29 January 1999, the BFF challenged the lack of transparency, scientific accuracy, plausibility and impartiality of the psychiatric report.

2.9 By judgement of 18 September 2000, the Asylum Review Commission dismissed the appeal, essentially based on the same contradictions already highlighted by the BFF. In addition, the Commission expressed doubts about the complainant's identity, since his brother had previously applied for asylum in Switzerland under the same name and because the complainant had given different dates of birth on different occasions. The Commission also excluded the possibility that, during his second hearing by the BFF, the complainant referred to his final detention when he mentioned a 7-day (instead of a 22-day) detention in connection with the visits of the ICRC delegates. Moreover, his claim that he voluntarily went to the CID when his mother informed him that he was a suspect in the Dehiwala bomb blast was not credible, assuming that he had been tortured by CID officers during previous detention. As to the medical evidence submitted by the complainant, the Commission, while conceding that the burns diagnosed in the medical report could have been caused by cigarettes, considered it unlikely that these injuries had been inflicted under the circumstances alleged by the complainant, based on the fact that he had clearly exaggerated the quantity of burns before the immigration police. Similarly, the Commission noted that the psychiatric report was submitted at a late stage of the proceedings, and considered it inconclusive on the question of whether the complainant had been tortured. While not excluding that the complainant could be arrested and beaten by the police upon return to Sri Lanka, the Commission concluded that no concrete risk of torture existed, as the Sri Lankan authorities could be reasonably expected to punish such incidents. It also considered the medical treatment available in Sri Lanka sufficient for the complainant's needs and confirmed the decision as well as the deportation order issued by the BFF.

2.10 On 23 July 2001, the complainant was arrested and detained by the immigration police in Zug, after he had tried to evade his expulsion scheduled for 24 January 2001 by going into hiding.

The complaint

3.1 The complainant claims that his forcible return to Sri Lanka would constitute a violation by the State party of article 3 of the Convention, since he would face a high risk of torture if he were deported to that country, as a young single male Tamil who had previously been arrested and tortured several times as a suspected LTTE activist.

3.2 The complainant submits that Sri Lankan security forces carry out daily raids against Tamils, who can be arrested for up to 18 months, under the Prevention of Terrorism Act (PTA), without an arrest warrant and without being informed of the charges against them. Under the Emergency Regulations (ER) supplementing the PTA, this period may repeatedly be prolonged for 90 days by a judicial commission whose decisions are not subject to appeal. During this time, detainees are frequently interrogated about their contacts with the LTTE and are often subjected to torture, ill-treatment or even extrajudicial execution.

3.3 By reference to several reports on the human rights situation in Sri Lanka,[f] the complainant submits that the risk of torture for Tamils has not diminished significantly over the past years.

3.4 The complainant argues that, because of his post-traumatic stress disorder, he is likely to show uncontrolled reactions in situations of danger such as raids and street inspections, which would further increase the risk of arrest and subsequent torture by the police. Moreover, no adequate medical and therapeutic treatment exists in Sri Lanka for traumatized persons.

3.5 The complainant claims that he has exhausted domestic remedies and that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

The State party's observations on admissibility and merits

4.1 On 18 September 2001, the State party conceded that the complaint is admissible and, on 8 February 2002, submitted its observations on the merits of the complaint. It endorses the arguments advanced by the Federal Office for Refugees and the Asylum Review Commission, and concludes that the author has failed to substantiate that he would be at a real and personal risk of being subjected to torture upon return to Sri Lanka.

4.2 The State party recalls important contradictions in the complainant's statements, conveying the impression that he had not been tortured as gravely as he claims, which could not simply be explained by the lack of accuracy typically shown by victims of torture. Even if the complainant had been ill-treated in the past, this was but one element to be considered in determining his present risk of torture. It did not automatically follow from his alleged past experiences that he would be at a substantial risk of persecution by the Sri Lankan authorities. In addition, UNHCR assessed the risk of Sri Lankan asylum-seekers whose application was rejected within fair asylum proceedings as being tolerable.

4.3 According to the State party, Tamils arrested during police round-ups were in most cases released within the 24 hours following their arrest, after their identity had been checked. The only Tamils facing longer periods of detention were those suspected of LTTE membership or whose family members were suspected LTTE members. Normally, residents of Tamil lodges were not arrested at all, as long as they could prove their identity. Having declared that he never participated in any political activities and that none of his family members belongs to the LTTE, the complainant could be presumed to be relatively safe from arrest by the security forces, given that he is also in possession of a copy documenting his acquittal by a Sri Lankan court, which he could easily produce during police controls. Moreover, the fact that he was released twice after payment of bail showed that he was not seriously suspected of being an LTTE member.

4.4 The State party submits that the protection of detainees in Sri Lanka was strengthened with the establishment of a Committee of Inquiry into Undue Arrest and Harassment, to which all arrests under the Prevention of Terrorism Act and the Emergency Regulations must be reported, and which can examine complaints about ill-treatment by the security forces. The Committee adopted its directives on 7 September 1998, providing that no person shall be arrested without being informed about the charges against him, without his family being informed about these charges and the place of detention, or in the absence of incriminating evidence. According to governmental sources, these requirements have enhanced respect for human rights during identity controls, as well as detention.

4.5 As to the complainant's medical situation, the State party submits that several institutions with an appropriate capacity for the treatment of traumatized victims existed in Sri Lanka, such as the Colombo-based Family Rehabilitation Centre which runs other branches in the country, and which offered appropriate medication as well as therapeutic treatment.

4.6 Lastly, the State party argues that, on 14 February 2001, the complainant himself agreed to benefit from the repatriation programme offered by the Federal Office for Refugees.

Complainant's comments on the State party's submissions

5.1 On 16 July 2002, counsel commented on the State party's merits submission, arguing that contradictions in the complainant's statements before the Swiss authorities resulted from a "diffusion of reality". Traumatized persons often experienced difficulties in remembering the details and chronology of their history. That the complainant changed essential details of his statements, such as the time of the visits of the ICRC delegates, during one and the same interview before the BFF only reflected the seriousness of his post-traumatic stress disorder. A healthy person intending to lie to the authorities would have presented a more coherent story.

5.2 The complaint's psychological disorder is said to increase his risk of being arrested, and subsequently tortured, by the Sri Lankan security forces, as he panics and tries to escape whenever he sees a policeman. That such behaviour would be considered suspicious by the police was reflected by the fact that the complainant provoked his own arrest at the train station of Zug on 23 July 2002, when he had recognized a policeman dressed in civilian and tried to run away. Once arrested, the Sri Lankan authorities could reasonably believe that the complainant was an LTTE activist, because of the scars on his body.

5.3 The complainant submits that the Federal Office for Refugees had merely challenged the objectivity of the psychiatric report and did not comply with its duty of investigation by ordering his examination by another psychiatrist. Similarly, the BFF had simply expressed doubts about the origin of the burns on his genitals, without investigating into the causes.

5.4 By reference to a judgement of the Administrative Court of Dresden (Germany) of 12 December 2000, the complainant submits that facilities for the treatment of traumatized persons in Sri Lanka are not sufficient to meet the demand of the tens of thousands of victims of torture in need. According to the Family Rehabilitation Centre itself, returned Tamil asylum-seekers suffering from post-traumatic stress disorder have little chance to receive appropriate and sustained treatment.

5.5 The complainant contends that he only signed up for the repatriation programme in February 2001 because he suffered from depression at that time, due to the repeated rejection of his asylum claim by the Swiss authorities.

5.6 On 23 July 2002, the complainant submitted another psychiatric report dated 19 July 2002 and issued by the Zurich Institute for Psychotraumatology (IPZ), diagnosing symptoms of social disintegration coupled with abuse of alcohol, depressive symptoms and the likelihood of a post-traumatic stress disorder linked to the complainant's past experiences in Sri Lanka. The report confirms that the contradictions in the complainant's statements before the immigration authorities should not be used to undermine his credibility, since such inconsistencies are part and parcel of the psycho-reactive symptoms of post-traumatic stress disorder which the complainant displays.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. In the present case, the Committee also notes that all domestic remedies have been exhausted and that the State party has not objected to the admissibility of the communication. It therefore considers that the communication is admissible and proceeds to the examination of the merits of the case.

6.2 The Committee must decide whether the forced return of the complainant to Sri Lanka would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In reaching its conclusion, the Committee must take into account all relevant considerations, including the existence, in the State concerned, of a consistent pattern of gross, flagrant or mass violations of human rights (article 3, paragraph 2, of the Convention).

6.3 The Committee has taken note of the reports cited by the complainant as well as the State party, which deny or confirm significant improvements in the protection of the rights of Tamils during identity controls, arrest and detention in Sri Lanka. The Committee notes from recent reports on the human rights situation in Sri Lanka that, although efforts have been made to eradicate torture, instances of torture continue to be reported, and that complaints of torture are often not dealt with effectively by police, magistrates and doctors. However, the Committee equally notes the ongoing peace process in Sri Lanka which led to the conclusion of the ceasefire agreement between the Government and the LTTE of February 2002, and the negotiations between the parties to the conflict which have taken place since. The Committee further recalls that, on the basis of the proceedings concerning its inquiry on Sri Lanka under article 20 of the Convention, it concluded that the practice of torture is not systematic in the State party.[d] The Committee finally notes that a large number of Tamil refugees returned to Sri Lanka in 2001 and 2002.[e]

6.4 The Committee recalls, however, that the aim of its examination is to determine whether the complainant would personally risk torture in the country to which he would return. It follows that, irrespective of whether a consistent pattern of gross, flagrant or mass violations of human rights can be said to exist in Sri Lanka, such existence would not as such constitute sufficient grounds for determining that the complainant would be in danger of being subjected to torture upon his return to Sri Lanka. Additional grounds must be adduced to show that he would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not necessarily mean that the complainant cannot be considered to be in danger of being subjected to torture in the specific circumstances of his case.

6.5 As regards the personal risk of the complainant to be subjected to torture at the hands of the Sri Lankan security forces, the Committee has noted his claim that the fact that he was arrested and tortured in the past as a suspected LTTE activist, as well as the after-effects of this torture, would expose him to an increased risk of renewed arrest and torture, based on his uncontrolled behaviour in stressful situations, and the suspicion likely to be created by such behaviour, as well as the scars on his body. It has noted the State party's arguments about the contradictions in the complainant's statements before the Swiss immigration authorities, his acquittal by a Sri Lankan court due to lack of evidence of LTTE involvement, and the legal safeguards introduced by the new Committee of Inquiry into Undue Arrest and Harassment since 1998 (see paragraph 4.4).

6.6 The Committee considers that, assuming that, based on the medical and psychiatric evidence submitted by the complainant, his case has been made out, considerable weight must be given to his allegations that he was tortured during past detention at the CID. However, the Committee notes that these alleged instances of torture did not occur in the recent past.[f]

6.7 Insofar as the complainant argues that his post-traumatic stress disorder would result in uncontrolled behaviour in stressful situations, thereby increasing his risk of arrest by the Sri Lankan police, the Committee observes that the fact that the complainant benefited from a court decision which acquitted him of terrorism charges, as well as his low political profile, can in turn be adduced as factors which are likely to lower any risk of serious consequences should he be arrested again.

6.8 With regard to the alleged absence of adequate psychiatric treatment for the complainant's post-traumatic stress disorder in Sri Lanka, the Committee considers that the aggravation of the complainant's state of health possibly resulting from his deportation to Sri Lanka would not amount to torture within the meaning of article 3, read in conjunction with article 1, of the Convention, which could be attributed to the State party itself.[g]

6.9 The Committee therefore is of the view that the complainant has not adduced sufficient grounds which would allow the Committee to conclude that he would be in danger of being subjected to a substantial, present and personal risk of torture if returned to Sri Lanka.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Sri Lanka by the State party would not constitute a breach of article 3 of the Convention.

Notes

[a] Liberation Tigers of Tamil Eelam.

[b] The documents include the Sri Lankan court decision of 2 August 1996 acquitting the complainant and a prison card issued by ICRC.

[c] Reference is made, inter alia, to an Amnesty International report of 20 July 2000 (ASA 37/022/2000).

[d] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 44* (A/57/44), chap. IV, sect. B, para. 181.

[e] See communication No. 191/2001, *S.S. v. The Netherlands*, decision adopted 5 May 2003, para. 6.3.

[f] See the Committee's general comment No. 1 at 8 (b).

[g] See, mutatis mutandis, communication No. 83/1997, *G.R.B. v. Sweden*, decision adopted 15 May 1998, para. 6.7.

Communication No. 187/2001

Submitted by: Mr. Dhaou Belgacem Thabti (represented by the non-governmental organization Vérité-Action)

On behalf of: The complainant

State party: Tunisia

Date of submission: 1 June 2000

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2003,

Having concluded its consideration of complaint No. 187/2001, submitted to the Committee against Torture by Mr. Dhaou Belgacem Thabti under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. Dhaou Belgacem Thabti, a Tunisian citizen, born on 4 July 1955 in Tataouine, Tunisia, and resident in Switzerland since 25 May 1998, where he has refugee status. He claims to have been the victim of violations by Tunisia of the provisions of article 1, article 2, paragraph 1, article 4, article 5, article 12, article 13, article 14, article 15 and article 16 of the Convention. He is represented by the non-governmental organization Vérité-Action.

1.2 Tunisia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and made the declaration under article 22 of the Convention on 23 September 1988.

Facts as submitted by the complainant

2.1 The complainant states that he was an active member of the Islamist organization ENNAHDA (formerly MTI). Following a wave of arrests in Tunisia, which commenced in 1990 and was targeted in particular against members of this organization, he went into hiding from 27 February 1991. On 6 April 1991, at 1 a.m., he was arrested and severely beaten by the police, who kicked, slapped and punched him and struck him with truncheons.

2.2 Incarcerated in the basement cells in the Interior Ministry (DST) building in Tunis and deprived of sleep, the complainant was taken, the following morning, to the office of the Director of State Security, Ezzedine Jneyeh. According to the complainant, this official personally ordered his interrogation under torture.

2.3 The complainant provides a detailed description, accompanied by sketches, of the different types of torture to which he was subjected until 4 June 1991 in the premises of the Interior Ministry (DST).

2.4 The complainant describes what is customarily known as the "roast chicken" position, in which the victim is stripped naked, his hands tied and his legs folded between his arms, with an iron bar placed behind his knees, from which he is then suspended between two tables. In this position he was subjected to beatings, in particular on the soles of his feet, until he passed out. The complainant adds that the policemen inflicting this torture would then bring him round by throwing cold water over his body and by applying ether to sensitive areas, such as his buttocks and testicles.

2.5 The complainant also claims to have been tortured in the "upside-down" position, whereby the victim is stripped, hands tied behind his back and suspended from the ceiling by a rope tied to one or both of his feet, with his head hanging downwards. In this position he was kicked and struck with sticks and whips until he passed out. He adds that his torturers tied a piece of string to his penis which they then repeatedly tugged, as if to tear his penis off.

2.6 The complainant claims to have been subjected to immersion torture, in which the victim is suspended upside-down from a hoist and immersed in a tank of water mixed with soap powder, bleach and sometimes even urine and salt; the victim is unable to breathe and is therefore forced to keep swallowing this mixture until his stomach is full. He states that he was then kicked in the stomach until he vomited.

2.7 The complainant also maintains that he was tortured in the "scorpion" position, in which the victim is stripped, his hands and feet tied behind his back, and then lifted by his torturers, face downwards, with a chain hoist, while pressure is applied to his spine. He states that, in this position, he was beaten and whipped on his legs, arms, stomach and genitals.

2.8 The complainant also claims to have been subjected to "table torture", in which he was stripped, made to lie flat on his back or stomach on a long table, with his arms and legs tied down, and was then beaten.

2.9 In support of his claims of torture and the effects of torture, the complainant submits a certificate from a Swiss physiotherapist, a report by a neurological specialist in Fribourg and a certificate of psychiatric treatment from the medical service of a Swiss insurance company. He also cites an observation mission report by the International Federation for Human Rights, stating that, during proceedings initiated on 9 July 1992 against Islamist militants, including the complainant, all the defendants that were interviewed complained that they had been subjected to serious physical abuse whilst in police custody.

2.10 The complainant provides a list of persons who subjected him to torture during this period, namely, Ezzedine Jneïeh, Director of DST; Abderrahmen El Guesmi; El Hamrouni Ben Amor, Inspector of Police; and Mahmoud El Jaouadi, Slah Eddine Tarzi and Mohamed Ennacer-Hleiss, all of Bouchoucha Intelligence Service. He adds that his torturers were assisted by two doctors and that he witnessed torture being inflicted on his fellow detainees.

2.11 On 4 June 1991, the complainant appeared before the military examining magistrate, Major Ayed Ben Kayed. The complainant states that, during the hearing, he denied the charges against him of having attempted a coup d'état, and that he was refused the assistance of counsel.

2.12 The complainant claims that he was then placed in solitary confinement in the premises of the Ministry of the Interior (DST), from 4 June to 28 July 1991, and refused all visits, mail, medicine and necessary medical attention, except for one visit, on 18 July 1991, by Dr. Moncef Marzouki, President of the Tunisian Human Rights League. The complainant adds that he was not fed properly, that he was denied the right to practise his religion and that he was once again subjected to torture.

2.13 From 28 July 1991, when his period of police custody ended, the complainant was repeatedly transferred between different prison establishments in the country - in Tunis, Borj Erroumi (Bizerte), Mahdia, Sousse, Elhaouareb and Rejim Maatoug - which transfers, he maintains, were designed to prevent him having any contact with his family.

2.14 The complainant describes the bad conditions in these detention facilities, such as overcrowding, with 60-80 persons in the small cells in which he was held, and the poor hygiene, which caused sickness; he maintains that, as a result, he developed asthma and suffered skin allergies and that his feet are now disfigured. He states that on several occasions he was placed in solitary confinement, partly because of the hunger strikes he mounted in the 9 April prison in Tunis over 12 days in July 1992, and in Mahdia over 8 days in October 1995 and 10 days in March 1996, as a protest against the conditions in which he was being held and the ill-treatment to which he was subjected, and partly by arbitrary decision of the prison warders. He also stresses that he was stripped naked and beaten in public.

2.15 On 9 July 1992 the complainant's case was heard by the Bouchoucha military court in Tunis. He maintains that he was only able to have one meeting with his counsel, on 20 July 1992, and that it was conducted under the surveillance of the prison warders. On 28 August 1992, he was sentenced to a term of six years' imprisonment.

2.16 On completion of his sentence on 27 May 1997, as indicated in the prison discharge papers he submits, the complainant was placed under administrative supervision for a period of five years, which effectively meant that he was placed under house arrest in Remada, 600 km from Tunis, where his wife and children were living. Four months later, on 1 October 1997, he fled Tunisia for Libya then made his way to Switzerland, where he obtained political refugee status on 15 January 1999. In support of his statements, the complainant submits a copy of the report issued on 10 March 1996 by the Tunisian Committee for Human Rights and Freedoms, describing his condition after his release, and a certificate from the Swiss Federal Office for Refugees, on the granting of his political refugee status. The complainant adds that, after he had fled from the country, he was sentenced in absentia to 12 years' non-suspended imprisonment.

2.17 Finally, the complainant states that members of his family, in particular his wife and their five children, have been the victims of harassment (night-time raids, systematic searches of their home, intimidation, threats of rape, confiscation of property and money, detention and interrogation, constant surveillance), and of ill-treatment (the complainant's son Ezzedinne has been detained and severely beaten) by the police throughout the period of his detention and after he fled the country, continuing until 1998.

2.18 As to whether all domestic remedies have been exhausted, the complainant states that he complained of acts of torture committed against him to the Bouchoucha military court, in the presence of the national press and international human rights observers. He maintains that the president of the court tried to ignore him but, when he insisted, replied that nothing had been established. In addition, the judge refused outright the complainant's request for a medical check.

2.19 The complainant adds that, after the hearing and his return to prison, he was threatened with torture if he repeated his claims of torture to the court.

2.20 The complainant maintains in addition that, from 27 May 1997, the date of his release, his house arrest prevented him from lodging a complaint. He explains that the Remada police and gendarmerie took part in a continuing process of harassment and intimidation against him during the daily visits he made for the purposes of administrative supervision. According to the complainant, the mere fact of submitting a complaint would have caused increased pressure to be applied against him, even to the point of his being returned to prison. Being under house arrest, he was also unable to apply to the authorities at his legal place of residence, in Tunis.

2.21 The complainant maintains that, while Tunisian law might make provision for the possibility of complaints against acts of torture, in practice, any victim submitting a complaint will become the target of intolerable police harassment, which acts as a disincentive to the use of this remedy. According to the complainant, any remedies are therefore ineffective and non-existent.

Substance of the complaint

3.1 The complainant maintains that the Tunisian Government has breached the following articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

> Article 1. The practices described above, such as the "roast chicken" position, the "upside-down" position, the "scorpion" position, immersion torture, "table torture" and solitary confinement, to which the complainant was subjected, constitute acts of torture.
>
> Article 2, paragraph 1. Not only has the State party failed to take effective measures to prevent torture, it has even mobilized its administrative machinery and, in particular, its police force as an instrument of torture against the complainant.
>
> Article 4. The State party has not ensured that all the acts of torture to which the complainant has been subjected are offences under its criminal law.
>
> Article 5. The State party has instituted no legal proceedings against those responsible for torturing the complainant.
>
> Article 12. The State party has not carried out an investigation of the acts of torture committed against the complainant.
>
> Article 13. The State party has not undertaken any examination of the allegations of torture made by the complainant at the beginning of his trial; instead, these have been dismissed.

Article 14. The State party has ignored the complainant's right to make a complaint and has thereby deprived him of his right to redress and rehabilitation.

Article 15. The complainant was sentenced on 28 August 1992 to a prison sentence on the basis of a confession obtained as a result of torture.

Article 16. The repressive measures and practices described above, such as violation of the right to medical care and medicine and the right to send and receive mail, restriction of the right to property and the right to visits by family members and lawyers, house arrest and harassment of the family, applied by the State party against the complainant constitute cruel, inhuman and degrading treatment or punishment.

State party's observations on admissibility

4.1 On 4 December 2001, the State party challenged the admissibility of the complaint on the grounds that the complainant has neither employed nor exhausted available domestic remedies.

4.2 The State party maintains that the complainant may still have recourse to the available domestic remedies, since, under Tunisian law, the limitation period for acts alleged to be, and characterized as, serious offences is 10 years.

4.3 The State party explains that, under the criminal justice system, the complainant may submit a complaint, from within Tunisia or abroad, to a representative of the Public Prosecutor's Office with jurisdiction in the area in question. He may also authorize a Tunisian lawyer of his own choice to submit the complaint or request a foreign lawyer to do so with the assistance of a Tunisian colleague.

4.4 Under the same rules of criminal procedure, the Public Prosecutor will receive the complaint and institute a judicial inquiry. In accordance with article 53 of the Code of Criminal Procedure, the examining magistrate to whom the case is referred will hear the author of the complaint. In the light of this hearing, he may decide to hear witnesses, question suspects, undertake on-site investigations and seize physical evidence. He may order expert studies and carry out any actions which he deems necessary for the uncovering of evidence, both in favour of and against the complainant, with a view to discovering the truth and verifying facts on which the trial court will be able to base its decision.

4.5 The State party explains that the complainant may, in addition, lodge with the examining magistrate during the pre-trial proceedings an application for criminal indemnification for any harm suffered, over and above the criminal charges brought against those responsible for the offences against him.

4.6 If the examining magistrate deems that the public right of action is not exercisable, that the acts do not constitute a violation or that there is no prima facie case against the accused, he shall rule that there are no grounds for prosecution. If, on the other hand, the magistrate deems that the acts constitute an offence punishable by imprisonment, he shall send the accused before a competent court - which in the present instance, where a serious offence has been committed, would be the indictment chamber. All rulings by the examining magistrate are immediately communicated to all the parties to the proceedings, including the complainant who brought the criminal indemnification proceedings. Having been thus notified within a period of 48 hours, the complainant may, within four days, lodge an appeal against any ruling prejudicial to his interests. This appeal, submitted in writing or orally, is received by the clerk of the court. If there is prima facie evidence of the commission of an offence, the indictment chamber sends the accused before the competent court (criminal court or criminal division of a court of first instance), having given rulings on all the counts established during the proceedings. If it chooses, it may also order further information to be provided by one of its assessors or by the examining magistrate; it may also institute new proceedings, or conduct or order an inquiry into matters which have not yet been the subject of an examination. The decisions of the indictment chamber are subject to immediate enforcement.

4.7 A complainant seeking criminal indemnification may appeal on a point of law against a decision of the indictment chamber once it has been notified. This remedy is admissible when the indictment chamber rules that there are no grounds for prosecution; when it has ruled that the application for criminal indemnification is inadmissible, or that the prosecution is time-barred; when it has deemed the court to which the case has been referred to lack jurisdiction; or when it has omitted to make a ruling on one of the counts.

4.8 The State party stresses that, in conformity with article 7 of the Code of Criminal Procedure, the complainant may bring criminal indemnification proceedings before the court to which the case has been referred (criminal court or criminal division of the court of first instance) and, as appropriate, may lodge an appeal, either with the Court of Appeal if the offence in question is an ordinary offence, or with the criminal division of the Court of Appeal if it is a serious offence. The complainant may also appeal to the Court of Cassation.

4.9 The State party maintains that the domestic remedies are effective.

4.10 According to the State party, the Tunisian courts have systematically and consistently acted to remedy deficiencies in the law, and stiff sentences have been handed down on those responsible for abuses and violations of the law. The State party says that, between 1 January 1988 and 31 March 1995, judgements were handed down in 302 cases involving members of the police or the national guard under a variety of counts, 227 of which fell into the category of abuse of authority. The penalties imposed varied from fines to terms of imprisonment of several years.[8]

4.11 The State party maintains that, given the complainant's "political and partisan" motives and his "offensive and defamatory" remarks, his complaint may be considered an abuse of the right to submit complaints.

4.12 The State party explains that the ideology and the political platform of the "movement" of which the complainant was an active member are based exclusively on religious principles, promoting an extremist view of religion which negates democratic rights and the rights of women. This is an illegal "movement", fomenting religious and racial hatred and employing violence. According to the State party, this "movement" perpetrated terrorist attacks which caused material damage and loss of life over the period 1990-1991. For that reason, and also because it is in breach of the Constitution and the law on political parties, this "movement" has not been recognized by the authorities.

4.13 The State party explains that the complainant is making serious accusations, not genuinely substantiated by any evidence, against the judicial authorities by claiming that judges accept confessions as evidence and hand down judgements on the basis of such evidence.

Complainant's comments on the State party's observations

5.1 In a letter dated 6 May 2002, the complainant challenges the State party's argument that he was supposedly unwilling to turn to the Tunisian justice system and make use of domestic remedies.

5.2 In this context, the complainant recalls his statements concerning the torture to which he had been subjected and his request for a medical check made to the judge of the military court, all of which were ignored and not acted upon, and his reports of violations of articles 13 and 14 of the Convention against Torture, as well as his contention that placing him under administrative supervision impeded due process. According to the complainant, the practice described above is routinely applied by judges, particularly against political prisoners. In support of his arguments, he cites extracts from reports by the Tunisian Committee for Human Rights and Freedoms, the International Federation for Human Rights and the Tunisian Human Rights League. He also refers to the annual reports of such international organizations as Amnesty International and Human Rights Watch, which have denounced the practices described by the complainant.

5.3 The complainant also challenges the explanations by the State party regarding the possibility of promptly instituting legal proceedings, the existence of an effective remedy and the possibility of bringing criminal indemnification proceedings.

5.4 The complainant argues that the State party has confined itself to repeating the procedure described in the Code of Criminal Procedure, which is far from being applied in reality, particularly where political prisoners are concerned. In support of his argument, he cites reports by Amnesty International, Human Rights Watch, the World Organization against Torture, the National Consultative Commission on Human Rights in France and the National Council for Fundamental Freedoms in Tunisia. He also refers to the Committee against Torture's final observations on Tunisia, dated 19 November 1998. The complainant stresses that the Committee against Torture recommended, among other things, that the State party should, first, ensure the right of victims of torture to lodge a complaint without the fear of being subjected to any kind of reprisal, harassment, harsh treatment or prosecution, even if the outcome of the investigation does not prove their allegations, and to seek and obtain redress if these allegations are proven correct; second, ensure that medical examinations are automatically provided following allegations of abuse and an autopsy is performed following any death in custody; and third, ensure that the findings of all investigations concerning cases of torture are made public and that this information includes details of any offences committed, the names of the offenders, the dates, places and circumstances of the incidents and the punishment received by those who were found guilty. The Committee also noted that many of the regulations existing in Tunisia for the protection of arrested persons were not adhered to in practice. It also expressed its concern over the wide gap that existed between law and practice with regard to the protection of human rights, and was particularly disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police, which, in certain cases, resulted in death in custody. In addition, the complainant mentions the decision by the Committee against Torture relating to communication No. 60/1996, *Faisal Baraket v. Tunisia*.

The complainant believes that the State party's statement regarding the possibility of ensuring an effective remedy constitutes political propaganda without any legal relevance. He explains that the cases cited by the State party (para. 4.10) relate to Tunisian citizens who were not arrested for political reasons, whereas the authorities reserve special treatment for cases involving political prisoners.

5.5 The complainant also challenges the State party's argument that a Tunisian lawyer can be instructed from abroad to lodge a complaint.

5.6 The complainant maintains that this procedure is a dead letter and has never been respected in political cases. According to him, lawyers who dare to defend such causes are subject to harassment and other forms of serious encroachment on the free and independent exercise of their profession, including prison sentences.

5.7 The complainant maintains that his situation as a political refugee in Switzerland precludes him from successfully concluding any proceedings that he might initiate, given the restrictions placed on contacts between refugees and the authorities in their own countries. He explains that severance of all relations with the country of origin is one of the conditions on which refugee status is granted, and that it plays an important role when consideration is being given to withdrawing asylum. According to the complainant, such asylum would effectively end if the refugee should once again, of his own volition, seek the protection of his country of origin, for example by maintaining close contacts with the authorities or paying regular visits to the country.

5.8 Lastly, the complainant believes that the State party's comments regarding his membership of the ENNAHDA movement and the aspersions cast upon it demonstrate the continued discrimination against the opposition, which is still considered illegal. According to the complainant, with its references in this context to terrorism, the State party is demonstrating its bias and any further talk of ensuring effective domestic remedies is therefore pure fiction. He also stresses that the prohibition of torture and inhuman or degrading treatment is a provision which admits of no exception, including for terrorists.[b]

5.9 Finally, in the light of his previous explanations, the complainant rejects the observation by the State party to the effect that the present complaint constitutes an abuse of the right to submit complaints.

Additional observations from the State party on admissibility

6.1 On 8 November 2002 the State party again challenged the admissibility of the complaint. It maintains, first, that the complainant's claims about recourse to the Tunisian justice system and the use of domestic remedies are baseless and unsupported by any evidence. It adds that proceedings in relation to the allegations made in the complaint are not time-barred, since the time limit for bringing proceedings in such cases is 10 years. It argues that the complainant offers no evidence in support of his claims that the Tunisian authorities' customary practice makes it difficult to initiate prompt legal action or apply for criminal indemnification. It adds that the complainant's refugee status does not deprive him of his right to lay complaints before the Tunisian courts. Third, it maintains that, contrary to the complainant's allegations, it is open to him to instruct a lawyer of his choice to lodge a complaint from abroad. Lastly, the State party reaffirms that the complaint is not based on any specific incident and cites no evidence, and constitutes an abuse of the right to submit complaints.

Committee's decision on admissibility

7.1 At its twenty-ninth session, the Committee considered the admissibility of the complaint, and in a decision of 20 November 2002 declared it admissible.

7.2 With regard to the issue of the exhaustion of domestic remedies, the Committee noted that the State party challenged the admissibility of the complaint on the grounds that the available and effective domestic remedies had not been exhausted. In the present case, the Committee noted that the State party had provided a detailed description both of the remedies available, under law, to any complainant and of cases where such remedies had been applied against those responsible for abuses and for violations of the law. The Committee considered, nevertheless, that the State party had not sufficiently demonstrated the relevance of its arguments to the specific circumstances of the case of this complainant, who claims to have suffered violations of his rights. It made clear that it did not doubt the information provided by the State party about members of the security forces being prosecuted and convicted for a variety of abuses. But the Committee pointed out that it could not lose sight of the fact that the case at issue dates from 1991 and that, given a statute of limitations of 10 years, the question arose of whether, failing interruption or suspension of the statute of limitations - a matter on which the State party had provided no information - action before the Tunisian courts would be disallowed. The Committee noted, moreover, that the complainant's allegations related to facts that had already been reported publicly to the judicial authorities in the presence of international observers. The Committee pointed out that to date it remained unaware of any investigations voluntarily undertaken by the State party. The Committee therefore considered it very unlikely in the present case that the complainant would obtain satisfaction by exhausting domestic remedies, and decided to proceed in accordance with article 22, paragraph 5 (b), of the Convention.

7.3 The Committee noted, in addition, the argument by the State party to the effect that the complainant's claim was tantamount to abuse of the right to lodge a complaint. The Committee considered that any report of torture was a serious matter and that only through consideration of the merits could it be determined whether or not the allegations were defamatory. Furthermore, the Committee believed that the complainant's political and partisan commitment adduced by the State party did not impede consideration of this complaint, in accordance with the provisions of article 22, paragraph 2, of the Convention.

State party's observations on the merits

8.1 In its observations of 3 April 2003 and 25 September 2003, the State party challenges the complainant's allegations and reiterates its position regarding admissibility.

8.2 In relation to the allegations concerning the State party's "complicity" and inertia vis-à-vis "practices of torture", the State party indicates that it has set up preventive[c] and dissuasive[d] machinery to combat torture so as to prevent any act which might violate the dignity and physical integrity of any individual.

8.3 Concerning the allegations relating to the "practice of torture" and the "impunity of the perpetrators of torture", the State party considers that the complainant has not presented any evidence to support his claims. It emphasizes that, contrary to the complainant's allegations, Tunisia has taken all necessary legal and practical steps, in judicial and administrative bodies, to prevent the practice of torture and prosecute any offenders, in accordance with articles 4, 5 and 13 of the Convention. Equally, according to the State party, the complainant has offered no grounds for his inertia and failure to act to take advantage of the effective legal opportunities available to him to bring his case before the judicial and administrative authorities (see paragraph 6.1). Concerning the Committee's decision on admissibility, the State party emphasizes that the complainant cites not only "incidents" dating back to 1991, but also "incidents" dating from 1995 and 1996, that is, a time when the Convention against Torture was fully incorporated into Tunisian domestic law and when he reports "ill-treatment" that he claims to have suffered while being held in "Mahdia prison". Hence the statute of limitations has not expired, and the complainant should urgently act to interrupt the limitation period, either by contacting the judicial authorities directly, or by performing an act which has the effect of interrupting the limitation. The State party also mentions the scope for the complainant to lodge an appeal for compensation for any serious injury caused by a public official in the performance of his duties,[e] noting that the limitation period stands at 15 years.[f] The State party points out that the Tunisian courts have always acted systematically to remedy deficiencies in the law on acts of torture (see paragraph 4.10).

8.4 As for the allegations of failure to respect guarantees relating to judicial procedure, the State party regards them as unfounded. According to the State party, the authorities did not prevent the complainant from lodging a complaint before the courts - on the contrary, he opted not to make use of domestic remedies. As for the "obligation" of judges to ignore statements made as a result of torture, the State party cites article 15 of the Convention against Torture, and considers that it is incumbent on the accused to provide the judge with at least basic evidence that his statement has been made in an unlawful manner. In this way he would confirm the truth of his allegations by presenting a medical report or a certificate proving that he had lodged a complaint with the public prosecutor's office, or even by displaying obvious traces of torture or ill-treatment to the court. However, the State party points out that although, in the case relating to Mr. Thabti, the court had ordered a medical check for all the prisoners who so wished, the complainant voluntarily opted not to make such a request, preferring to reiterate his allegations of "ill-treatment" to the court, for the purpose of focusing on himself the attention of the observers attending the hearing. The complainant justifies his refusal to undergo the medical examination ordered by the court on the grounds that the doctors would behave in a "compliant" manner. The State party replies that the doctors are appointed by the examining magistrate or the court from among the doctors working in the prison administration and doctors who have no connection with it and who enjoy a reputation and integrity above all suspicion. Lastly, according to the State party, the complainant did not deem it necessary to lodge a complaint either during his detention or during his trial, and his refusal to undergo a medical examination illustrates the baselessness of his allegations and the fact that his actions form part of a strategy adopted by the "ENNAHDA" illegal extremist movement in order to discredit Tunisian institutions by alleging acts of torture and ill-treatment but not making use of available remedies.

8.5 Concerning the allegations relating to the trial, according to the State party, although the complainant acknowledges that two previous cases against him in 1983 and 1986 were dismissed for lack of evidence, he continues nevertheless to accuse the legal authorities systematically of bias. In addition, contrary to the complainant's allegations that during his trial and during questioning the examining magistrate attached to the Tunis military court denied him the assistance of counsel, the State party points out that Mr. Thabti himself refused such assistance. According to the State party, the examining magistrate, in accordance with the applicable legislation, reminded the complainant of his right not to reply except in the presence of his counsel, but the accused opted to do without such assistance, while refusing to answer the examining magistrate's questions. Given the complainant's silence, the magistrate warned him, in accordance with article 74 of the Code of Criminal Procedure, that he would embark on examination proceedings, and noted this warning in the record. Concerning the complainant's claim that he was found guilty on the sole basis of his confession, the State party points out that, under the last paragraph of article 69 and article 152 of the Code of Criminal Procedure, a confession on the part of the accused cannot relieve the judge of the obligation to seek other evidence, while confessions, like all items of evidence, are a matter for the independent appreciation of the judge. On that basis, it is a constant of Tunisian case law that an accused cannot be found guilty on the sole basis of a confession.[8] In the case in question, the basis for the court's decision, in addition to the confessions made by the complainant throughout the judicial proceedings, was statements by witnesses, testimony by his accomplices and items of evidence.

8.6 Concerning the allegations relating to prison conditions, and in particular the transfers between one prison and another, which the complainant considers an abuse, the State party points out that, in keeping with the applicable regulations, transfers are decided upon in the light of the different stages of the proceedings, the number of cases and the courts which have competence for specific areas. The prisons are grouped in three categories: for persons held awaiting trial; for persons serving custodial sentences; and semi-open prisons for persons found guilty of ordinary offences, which are authorized to organize agricultural labour. According to the State party, as the status of the complainant had changed from that of remand prisoner to that of a prisoner serving a custodial sentence, and bearing in mind the requirements as to investigations in his case or in other similar cases, he was transferred from one prison to another, in accordance with the applicable regulations. Moreover, the conditions in which the complainant was held, wherever he was held, were in keeping with the prison regulations governing conditions for holding prisoners in order to ensure prisoners' physical and moral safety. The State party also considers baseless the complainant's allegations improperly equating the conditions in which he was held with degrading treatment. It points out that prisoners' rights are scrupulously protected in Tunisia, without any discrimination, whatever the status of the prisoner, in a context of respect for human dignity, in accordance with international standards and Tunisian legislation. Medical, psychological and social supervision is provided, and family visits are allowed.

8.7 Contrary to the allegations that the medical consequences suffered by the complainant are due to torture, the State party rejects any causal link. Moreover, according to the State party, the complainant was treated for everyday medical problems and received appropriate care. Lastly, following an examination by the prison doctor, the complainant was taken to see an ophthalmologist, who prescribed a pair of glasses on 21 January 1997.

8.8 Concerning the allegations that he was denied visits, according to the State party the complainant regularly received visits from his wife Aicha Thabti and his brother Mohamed Thabti, in accordance with the prison regulations, as demonstrated by the visitors' records in the prisons in which he was held.

8.9 Concerning the allegations relating to administrative supervision and the social position of Mr. Thabti's family, according to the State party, the administrative supervision to which the complainant was subject after having served his prison term, and which he equates with ill-treatment, is in fact an additional punishment for which provision is made in article 5 of the Criminal Code. The State party therefore considers that the punishment cannot be regarded as ill-treatment under the Convention against Torture. Lastly, contrary to the complainant's allegations, the State party maintains that the complainant's family is not suffering from any form of harassment or restrictions, and that his wife and his children are in possession of their passports.

Observations by the complainant

9.1 In his observations dated 20 May 2003, the complainant sought to respond to each of the points contained in the above observations by the State party.

9.2 Concerning the preventive arrangements for combating torture, the complainant considers that the State party has confined itself to listing an arsenal of laws and measures of an administrative and political nature which, he says, are not put into effect in any way. To support this assertion he cites reports prepared by the non-governmental organization "National Council for Fundamental Freedoms in Tunisia" (CNLT).[8]

9.3 In relation to the establishment of a legislative reference system to combat torture, the complainant considers that article 101 bis of the Code of Criminal Procedure was adopted belatedly in 1999, in particular in response to the concern expressed by the Committee against Torture at the fact that the wording of article 101 of the Criminal Code could be used to justify serious abuses involving violence during questioning. He also claims that this new article is not applied, and attaches a list of the victims of repression in Tunisia between 1991 and 1998 prepared by the non-governmental organization "Vérité-Action". He also points out that the cases cited by the State party to demonstrate its willingness to act to combat torture relate only to accusations of abuse of authority and violence and assault, as well as offences under the ordinary law, and not to cases of torture leading to death or cases involving physical and moral harm suffered by the victims of torture.

9.4 Concerning the practice of torture and impunity, the complainant maintains that torturers do enjoy impunity, and that in particular no serious investigation has been carried out into those suspected of committing crimes of torture. Contrary to the claims made by the State party, he states that he endeavoured to lodge a complaint with the military court on several occasions, but that the president of the court always ignored his statements relating to torture on the grounds that he had no medical report in his possession. According to the reports prepared by CNLT, the court heard from the various accused and their counsel a long account of the atrocities committed by the officials of the State security division. According to the complainant, from among the total number of 170 prisoners scheduled to be tried before the Bouchoucha military court, the prison authorities selected only 25 to be given medical checks by military doctors. He claims that he was not informed of this check when he was being held in remand, but learned of it only in court. According to the complainant, the president ignored the fact that the other accused had not had medical checks, and it is false to claim that he himself freely opted not to demand one. When apprised of this fact, the president simply ignored the objections of the prisoners and their counsel, including the complainant, in flagrant breach of the provisions of the law relating to the prisoners' right to a medical report and their constitutional right to be heard, as the CNLT report confirms. According to the complainant, this is proved by the State party's acknowledgement that during the hearing he raised allegations of ill-treatment. In addition, according to the complainant, whereas a State governed by the rule of law should automatically follow up any report of a criminal act which may be regarded as a serious offence, the Tunisian authorities have always contented themselves with dismissing the claims as "false, contradictory and defamatory", without taking the trouble to launch investigations to determine the facts in accordance with the requirements of Tunisian criminal procedure. The complainant considers that his allegations are at the very least plausible in terms of the detail of the torture he suffered (names, places and treatment inflicted), but the State party contents itself with a blanket denial. The complainant did not mention torturers because of their membership of the security forces, but because of specific and repeated attacks on his physical and moral integrity and his private and family life. The initiation of an investigation designed to check whether a person belonging to the security forces has committed acts of torture or other acts does not constitute a violation of the presumption of innocence but a legal step which is vital in order to investigate a case and, if appropriate, place it before the judicial authorities for decision. In relation to appeals before the courts, the complainant considers that the State party has confined itself to repeating the description of legal options open to victims set out in its previous submissions without responding to the last two sentences of paragraph 7.2 of the decision on admissibility. He reiterates that the theoretical legal options described by the State party are inoperative, while listing in support of this conclusion cases in which the rights of the victims were ignored. He points out that the case law cited by the State party relates to cases tried under ordinary law and not to prisoners of opinion.

9.5 Concerning the complainant's inertia and lack of action, he considers that the State party is inconsistent in holding that acts of torture are regarded as serious offences in Tunisian law and accordingly prosecuted automatically, while awaiting a complaint by the victim before taking action. He also re-emphasizes his serious efforts described above to demand a medical examination and an investigation into the torture he had suffered. With particular reference to a report prepared by CNLT,[i] he mentions the circumstances surrounding the medical examinations of 25 prisoners, carried out with the aim of giving an appearance of respect for procedural guarantees, and the lack of integrity of the appointed doctors.[j] He points out that video recordings were made of the hearings in the Bouchoucha military court, which could then be replayed to check each complainant's statements.

9.6 Concerning the allegations relating to the trial, the complainant points out, first, that the dismissal of proceedings against him in 1983 and 1986 took place in a political context of détente (in 1983 and 1984, the phased release of the leaders of the Mouvement de la Tendance Islamique, which became ENNAHDA in 1989) and the legitimization of a new regime (a presidential amnesty was proclaimed after the 1987 coup d'état), and illustrated the fact that the courts were dependent on the executive branch (as shown in reports prepared by non-governmental organizations).[k] Second, in relation to his refusal of the assistance of counsel, the complainant provides the following corrections and produces a report prepared by CNLT.[l]

Appearing before examining magistrate Ayed Ben Gueyid, attached to the Tunis military court, the complainant reiterated his request to be assisted by a court-appointed lawyer or one instructed by his family. The complainant designated Mr. Najib ben Youssef, who had been contacted by his family. This lawyer advised him to consult Mr. Moustafa El-Gharbi, who was able to assist the complainant only from the fourth week of the trial onwards, and was able to pay him only one or two visits in the 9 April prison, under close surveillance by prison guards. In response to the complainant's request for the assistance of a lawyer, the military examining magistrate replied "No lawyer", prompting the complainant to say "No lawyer, no statement". Following this declaration, the complainant reports that he was violently beaten by military policemen, in a room next to the office of the military examining magistrate, during a break which was imposed and ordered by the magistrate. The complainant was then placed in solitary confinement in the 9 April prison in Tunis for two months. Following this punishment, the examining magistrate's file was missing from the first hearing attended by the complainant, a matter which the complainant explained to the president of the court by describing what had happened before the military examining magistrate.

9.7 Concerning the allegations relating to his confession, the complainant maintains that his confession was extracted under torture, and, citing the reports of CNLT, states that such methods are used in political trials and sometimes in trials involving offences under ordinary law. Concerning the testimony of the prosecution witness Mohamed Ben Ali Ben Romdhane, his fellow prisoner, the complainant states that he does not know this person, and that he was not among the 297 persons who were tried in Bouchoucha court, and calls on the State party to produce the transcript of the testimony provided by this person, together with the court file, to make it possible to check whether the court took its decision on the basis of a confession obtained as a result of torture. According to the complainant, the reference to this witness is pure invention on the part of the torturers. Secondly, the complainant points out that, even if a prosecution witness had appeared, the accused should have had an opportunity to challenge his testimony or to confront him, which did not happen.

9.8 Concerning the conditions in which he was held, and concerning visits, the complainant considers that the State party has once again confined itself to brief and general observations in response to his plentiful, specific and substantiated evidence. He explains that he was transferred for purposes of punishment, and not for any matter related to cases pending before the courts, and in that connection provides the following chronology:

6 April 1991	Arrested and held in the basement of the Interior Ministry; 13 May 1991, transferred to Mornag prison incommunicado.
4 June 1991	Handed over to the political police to sign the transcript of the interrogation, without being informed of its content; handed over to the military examining magistrate, then at 11 p.m. transferred to the 9 April prison in Tunis, where he was held until the end of November 1991 (including two months in solitary confinement).
1 December 1991	Transferred to Borj Erroumi prison in Bizerte (70 kilometres from his family home).

4 July 1992	Transferred to the 9 April prison in Tunis, where he was held until 15 September 1992; this period corresponded to that of the court hearings.
28 August 1992	Sentenced to six years' non-suspended imprisonment and five years' administrative supervision.
15 September 1992	Transferred to Borj Erroumi prison in Bizerte, where he was held until 4 July 1993.
4 July 1993	Transferred to Mahdia prison (200 kilometres from his home), where he was held until 19 September 1993.
19 September 1993	Transferred to Sousse prison (160 kilometres from his home), where he was held until 4 April 1994.
4 April 1994	Transferred to Mahdia prison, where he was held until the end of December 1994.
End of December 1994	Transferred to 9 April prison in Tunis; interrogated and tortured at the Interior Ministry for four consecutive days.
End of December 1995	Transferred to Mahdia prison; hunger strike from the middle to the end of February 1996 to support a demand for better prison conditions.
End of February 1996	Transferred to El Houerib prison in Kairouan (250 kilometres from his home) following his hunger strike.
20 March 1996	Transfer to Sousse prison; three weeks' hunger strike in January 1997 to support a demand for better prison conditions.
7 February 1997	Transferred to Rejim Maatoug prison (600 kilometres from his home, in the middle of the desert).
27 February 1997	Transfer to Sousse prison.
27 May 1997	Released, placed under administrative supervision for five years and house arrest at Nekrif-Remada (630 kilometres from his family home).
1 October 1997	Fled Tunisia.

9.9 The complainant explains that each time he was transferred, his family was obliged to spend two or three months ascertaining his new place of detention, since the prison administration provided such information only very sparingly. According to the complainant, the purpose of these transfers was to deprive him of the psychological and moral support of his family, and thus to punish him. He points out that the prison entry and exit logs can confirm his claims. He explains that denial of visits constituted a form of revenge against him each time he sought to exercise a right and took action to that end, for example in the form of a hunger strike.

In addition, the complainant's family found it difficult to exercise the right to visit him because of the many transfers, the remoteness of the places of detention and the conditions imposed on the visitors - the complainant's wife was ill-treated to make her remove her scarf, and guards were permanently present between two sheets of wire mesh about one metre apart separating her from the complainant.

9.10 Concerning the allegations relating to the provision of care, the complainant repeats that he was denied the right to consult a doctor to diagnose the consequences of the torture he had suffered, and draws the Committee's attention to the medical certificate contained in his file. Concerning the treatment cited by the State party, the complainant points out that the medical check was carried out three weeks after his hunger strike, that glasses were prescribed for him when he was in danger of going blind, and that they were supplied only after a delay of about two months.

9.11 In relation to administrative supervision, the complainant considers that any punishment, including those provided for in the Tunisian Criminal Code, may be characterized as inhuman and degrading if the goal pursued is neither the "rehabilitation of the offender" nor his reconciliation with his social environment. He explains that he was forced to undergo administrative supervision 650 kilometres from his family home, in other words placed under house arrest, which was not stipulated in his sentence. He adds that each time he reported to the police station to sign the supervision log, he was ill-treated, sometimes beaten and humiliated by the police officers. According to the complainant, who produces a CNLT report,[illegible] administrative supervision serves only to bolster the police's stranglehold over the freedom of movement of former prisoners.

9.12 Concerning the situation of his family, the complainant records the suffering caused by the police surveillance and various forms of intimidation. He mentions that his eldest son was repeatedly slapped in front of his brothers and mother at the door of their home when he returned from school, and questioned at the regional police station about what his family was living on. In addition, the members of the family received their passports only after the complainant arrived in Switzerland on 25 May 1998 and was granted asylum. And the first members of the family received their passports only seven months later, on 9 December 1998.

9.13 In relation to the ENNAHDA movement, the complainant maintains that the organization is well known for its democratic ideals and its opposition to dictatorship and impunity, contrary to the State party's explanations. In addition, he challenges the accusations of terrorism levelled by the State party.

9.14 Lastly, according to the complainant, the State party is endeavouring to place the entire burden of proof on the victim, accusing him of inertia and failure to act, seeking protection behind a panoply of legal measures which theoretically enable victims to lodge complaints and evading its duty to ensure that those responsible for crimes, including that of torture, are automatically prosecuted. According to the complainant, the State party is thus knowingly ignoring the fact that international law and practice in relation to torture place greater emphasis on the role of States and their duties in order to enable proceedings to be completed. The complainant notes that the State party places the burden of proof on the victim alone, even though the supporting evidence, such as legal files, registers of police custody and visits, and so on, is in the sole hands of the State party and unavailable to the complainant. Referring to

European case law,[n] the complainant points out that the European Court and Commission call on States parties, in the case of allegations of torture or ill-treatment, to conduct an effective investigation into the allegations of ill-treatment and not to content themselves with citing the theoretical arsenal of options available to the victim to lodge a complaint.

Consideration of the merits

10.1 The Committee examined the complaint, taking due account of all the information provided to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

10.2 The Committee took note of the State party's observations of 3 April 2003 challenging the admissibility of the complaint. It notes that the points raised by the State party are not such as to prompt reconsideration of the Committee's decision on admissibility, notably owing to the lack of new or additional information from the State party on the matter of the investigations voluntarily carried out by the State party (see paragraph 7.2). The Committee therefore does not consider that it should review its decision on admissibility.

10.3 The Committee therefore proceeds to examine the merits of the complaint, and notes that the complainant alleges violations by the State party of article 1, article 2, paragraph 1, article 4, article 5, article 12, article 13, article 14, article 15 and article 16 of the Convention.

10.4 The Committee notes that article 12 of the Convention places an obligation on the authorities to proceed automatically to a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or ill-treatment has been committed, no special importance being attached to the grounds for the suspicion.[o]

10.5 The Committee notes that the complainant complained of acts of torture committed against him to the Bouchoucha military court at his trial from 9 July 1992 onwards, in the presence of the national press and international human rights observers. It also notes that the State party acknowledges that the complainant reiterated his allegations of ill-treatment several times before the court, in order, according to the State party, to focus the attention of the observers attending the hearing. The Committee also takes note of the detailed and substantiated information provided by the complainant regarding his hunger strikes in the 9 April prison over 12 days in July 1992 in Tunis, and in Mahdia over 8 days in October 1995 and 10 days in March 1996, as a protest against the conditions in which he was being held and the ill-treatment to which he was subjected. The Committee notes that the State party did not comment on this information, and considers that these elements, taken together, should have been enough to trigger an investigation, which was not held, in breach of the obligation to proceed to a prompt and impartial investigation under article 12 of the Convention.

10.6 The Committee observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence, and that it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this provision of the Convention.[p]

10.7 The Committee notes, as already indicated, that the complainant did complain of ill-treatment to the Bouchoucha military court, and resorted to hunger strikes in protest at the conditions imposed on him. Yet notwithstanding the jurisprudence under article 13 of the Convention, the Committee notes the State party's position maintaining that the complainant should have made formal use of domestic remedies in order to lodge his complaint, for example by presenting to the court a certificate proving that a complaint had been lodged with the office of the public prosecutor, or displaying obvious traces of torture or ill-treatment, or submitting a medical report. On this latter point, to which the Committee wishes to draw its attention, it is clear that the complainant maintains that the president of the Bouchoucha court ignored his complaints of torture on the grounds that he had no medical report in his possession, that the complainant was informed only during his trial of the medical checks carried out on a portion of the accused during remand, and that the president of the court ignored his demands for his right to a medical report to be respected. On the other hand, the State party maintains that the complainant voluntarily opted not to request a medical examination although the court had ordered such examinations for all prisoners who wished to undergo one. The Committee refers to its consideration of the report submitted by Tunisia in 1997, at which time it recommended that the State party should ensure that medical examinations are provided automatically following allegations of abuse, and thus without any need for the alleged victim to make a formal request to that effect.

10.8 In the light of its practice relating to article 13 and the observations set out above, the Committee considers that the breaches enumerated are incompatible with the obligation stipulated in article 13 to proceed to a prompt investigation.

10.9 Finally, the Committee considers that there are insufficient elements to make a finding on the alleged violation of other provisions of the Convention raised by the complainant at the time of adoption of this decision.

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 12 and 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

12. Pursuant to rule 112, paragraph 5 of its rules of procedure, the Committee urges the State party to conduct an investigation into the complainant's allegations of torture and ill-treatment, and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.

Notes

[a] The examples cited by the State are available for information in the file.

[b] The complainant also refers to communication No. 91/1997, *A. v. The Netherlands*, concerning which the Committee upheld the complaint of a Tunisian asylum-seeker who was a member of the opposition because of the serious risk that he would be tortured if he returned to Tunisia.

[c] This includes instruction in human rights values in training schools for the security forces, the Higher Institute of the Judiciary and the National School for training and retraining of staff and supervisors in prisons and correctional institutions; a human rights-related code of conduct aimed at senior law enforcement officials; and the transfer of responsibility for prisons and correctional institutions from the Ministry of the Interior to the Ministry of Justice and Human Rights.

[d] A legislative reference system has been set up: contrary to the complainant's allegation that the Tunisian authorities have not criminalized acts of torture, the State party indicates that it has ratified the Convention against Torture without reservations, and that the Convention forms an integral part of Tunisian domestic law and may be invoked before the courts. The provisions of criminal law relating to torture are severe and precise (Criminal Code, art. 101 bis).

[e] Under the Administrative Court Act of 1 June 1972, the State may be held responsible even when it is performing a sovereign act if its representatives, agents or officials have caused material or moral injury to a third person. The injured party may demand from the State compensation for the injury suffered, under article 84 of the Code of Obligations and Contracts, without prejudice to the direct liability of its officials vis-à-vis the injured parties.

[f] Administrative Court, judgement No. 1013 of 10 May 1993 and judgement No. 21816 of 24 January 1997.

[g] Judgement No. 4692 of 30 July 1996, published in the *Revue de Jurisprudence et Législation* (R.J.L.); judgement No. 8616 of 25 February 1974, R.J.L. 1975; and judgement No. 7943 of 3 September 1973, R.J.L. 1974.

[h] "Le procès-Tournant: A propos des procès militaires de Bouchoucha et de Bab Saadoun en 1992", October 1992; "Pour la réhabilitation de l'indépendance de la justice", April 2000-December 2001.

[i] Information available in the file.

[j] "The role played by some of the doctors was no less serious, in the sense of what they did during the torture by assisting the torturers [to assess] the state of the victim and the degree of torture the victim could bear … information gathered from the torture victims or from analyses carried out in which famous doctors knowingly concealed the truth about the causes of the injuries suffered by the accused during episodes of physical torture" - CNLT report, October 2002.

[k] International Commission of Jurists, report on Tunisia, 12 March 2003.

[l] Information available in the file.

[m] Information available in the file.

[n] Guide to Jurisprudence on Torture and Ill-Treatment - Article 3 of the European Convention for the Protection of Human Rights, Debra Long (APT); *Ribitsch v. Austria*; *Assenov v. Bulgaria*.

[o] Communication No. 59/1996 (*Encarnación Blanco Abad v. Spain*).

[p] Communications No. 6/1990 (*Henri Unai Parot v. Spain*) and No. 59/1996 (*Encarnación Blanco Abad v. Spain*).

Communication No. 188/2001

Submitted by:	Mr. Imed ABDELLI (represented by the non-governmental organization Vérité-Action)
On behalf of:	The complainant
State party:	Tunisia
Date of submission:	29 June 2000

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2003,

Having concluded its consideration of complaint No. 188/2001, submitted to the Committee against Torture by Mr. Imed Abdelli under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1. The complainant is Mr. Imed Abdelli, a Tunisian citizen, born on 3 March 1966 in Tunis and resident in Switzerland since 7 July 1998, where he has refugee status. He claims to be the victim of violations by Tunisia of the provisions of article 1, article 2, paragraph 1, article 4, article 5, article 11, article 12, article 13, article 14, article 15 and article 16 of the Convention. He is represented by the non-governmental organization Vérité-Action.

1.2 Tunisia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and made the Declaration under article 22 of the Convention on 23 September 1988.

Facts as submitted by the complainant

2.1 The complainant states that he was an active member of the Islamist organization ENNAHDA (formerly MTI). One day in July 1987, at 1.30 a.m., the complainant was arrested at his home, on the grounds that he belonged to an unauthorized association. He says that, while he was being arrested, the police manhandled his mother and beat two of his brothers with their truncheons. The complainant was held for 2 days at the district police station in a dirty cellar with no water; for 10 days in the holding cells in El Gorjani, from where he was taken daily to the Jebel Jelloud district police headquarters for questioning; and for 1 month at the Bouchoucha detention centre.

2.2 The complainant provides a detailed description of the different types of torture to which he was subjected.

2.3 The complainant describes what is customarily known as the "roast chicken" position, in which the victim is stripped naked, his hands tied and his legs folded between his arms, with an iron bar placed behind his knees, from which he is then suspended between two tables and beaten, in particular on the soles of his feet, his knees and his head. The complainant says that he was subjected to this torture for two sessions lasting more than one hour each. He adds that, during one of these sessions, his torturers also masturbated him to humiliate him and leave him exhausted.

2.4 The complainant also claims that he was subjected to "chair" torture, in which the victim is forced to kneel and to hold a chair as high as possible above his head, and is then whipped whenever he starts to lower the chair.

2.5 Following this, for one month, in the detention centre of the intelligence service in Bouchoucha, the complainant was subjected to interrogation under torture, namely, the "roast chicken" position, until he passed out. He adds that, every day, when being escorted from his cell to the offices, he was struck across the face and hit with truncheons. In addition, according to the complainant, his family was unable to obtain any information about him and his mother was detained, for an entire day, in the premises of the Ministry of the Interior for having requested a meeting with her son. The complainant asserts that he witnessed torture being inflicted on other detainees, such as Zoussef Bouthelja and Moncef Zarrouk, the latter having died in his cell on 13 August 1987 as a result of the ill-treatment to which he had been subjected.

2.6 From the end of August to 25 October 1987, the complainant was detained in Tunis prison in an overcrowded cell with no facilities.

2.7 On 25 October 1987, the complainant was placed in Mornag prison, after being sentenced to two years' immediate imprisonment. When the indictment against him was quashed he was released on 24 December 1987.

2.8 Two months later, the complainant was questioned by the police for possession of a video cassette showing the bloodshed of 1987 committed by the State security services of Sousse governorate. The complainant was held for 15 days at the headquarters of the Ministry of the Interior and was subjected to interrogation accompanied by slaps, beatings and intimidation. He was released on 30 March 1988.

2.9 According to the complainant, following the April 1989 elections, he stopped coming back to his family home because of a wave of arrests being conducted at the time, targeted in particular against opposition party members and sympathizers. The complainant claims that in 1990 his family was subjected to harassment (night-time raids, summonses for questioning and confiscation of passports). In May 1991, the complainant's brothers Lofti and Nabil were detained and tortured in order to get information about the complainant.

2.10 On 20 November 1991, at 7 a.m., the complainant was detained by the State security services. He maintains that, for the next 25 days he was subjected to various forms of torture. The complainant mentions the practice of "balanco", in which the victim is held upside down and immersed in dirty water with an admixture of bleach and other chemicals until he chokes. The victim adds that his torturers tied a piece of string to his penis which they then repeatedly tugged in all directions, until it started emitting a mixture of blood and sperm.

2.11 The complainant was also placed on a table where he was masturbated and then beaten on his erect penis. The complainant claims that he was given injections in his testicles, which caused first strong arousal and then intolerable pain. He adds that he was subjected to sessions of beatings administered by experts, in which he was struck on both ears at the same time until he passed out, and claims that his hearing has been permanently damaged as a result. He also claims that his torturers were assisted by a doctor, to ensure that torture was applied in the most effective doses.

2.12 According to the complainant, on the twenty-fifth day, the Director of State Security, Ezzedine Djmail, stubbed out cigarettes on his body, notably in the region of his genitalia.

2.13 On 13 January 1992, the complainant was taken to Tunis central prison.

2.14 After appearing briefly before the judge, on 12 March 1992, the complainant was sentenced to two years' immediate imprisonment and three years' administrative supervision for helping to support an unauthorized association, and this verdict was upheld on appeal on 7 July 1992. The complainant submits a statement by a representative of the non-governmental organization Human Rights Watch, who attended one session of the trial and states that his case was disturbing.

2.15 The complainant states that his request for a medical check was refused and that he was even threatened by a member of the prison service with further torture if he dared complain of his treatment to the judge.

2.16 After six months in Tunis central prison, the complainant was repeatedly transferred between different penal institutions in the country, including El Kef prison, from 19 July to 15 October 1992; Kasserine, from 15 to 18 October 1992; and then Gafsa, and others, which transfers, he maintains, were designed to prevent him from having any contact with his family. The complainant says that he was treated like an "untouchable", in other words, he was barred from speaking with or being helped by other detainees; his mail and family visits were obstructed. The complainant says that his mother was always abused when she visited the prison - her headscarf was ripped off and she was summoned for questioning after the visits.

2.17 On leaving Gafsa prison on 11 January 1994, the complainant was taken to the governorate security headquarters to fill in a report sheet and to answer questions about the activities of other prisoners and his future plans. He was ordered to report at Gorjani district police headquarters as soon as he arrived in Tunis.

2.18 The complainant was also required to report for administrative supervision twice a day, at 10 a.m. and 4 p.m. at the local police station, and to report daily to the district police headquarters. According to the complainant, these supervision arrangements had the practical effect of house arrest, accompanied by a prohibition on employment. In addition, several weeks after his release, the complainant was required to report for questioning by various security bodies, including the national guard station on route X in Bardo, the national guard investigation centre in Bardo, the intelligence service, the State security service and the national guard barracks in Aouina. These bodies all subjected him to questioning and demanded that he collaborate with them in monitoring members of the opposition, on pain of continued harassment against him and his family, through such measures as night-time raids and summonses for questioning.

2.19 The complainant claims that, after he threatened to defy the administrative supervision arrangements, he was able to resume his university studies, but these were still severely disrupted by the repeated summonses to Sijoumi police headquarters for questioning, because of his refusal to collaborate.

2.20 In spring 1995, the complainant was rearrested on the grounds that he had attempted to flee the country. He was held for 10 days and subjected to ill-treatment, comprising beatings, slaps and threats of sexual abuse, in an endeavour to force him to collaborate. Under this coercion, the complainant signed a minuted record on 12 April 1995, certifying that he was an active member of the unauthorized organization ENNAHDA.

2.21 The complainant was then sentenced, on 18 May 1995, by the court of first instance in Tunis to three years' immediate imprisonment and five years' administrative supervision; this verdict was upheld on appeal on 31 May 1996.

2.22 The complainant says that he requested the judge at the court of first instance in Tunis to protect him from the torture to which he was subjected daily in prison, and also informed him that he had been on hunger strike for a week. According to the complainant, the police then escorted him from the courtroom in the presence of the judge, who did not react.

2.23 While held in Tunis central prison from 13 April 1995 to 31 August 1996, the complainant was subjected to torture which, on this occasion, comprised the practice of "falka", in which the torturers tie the victim's legs to a bar and raise his feet in the air so that they can whip the soles of his feet. The complainant explains that the deputy director of the prison personally participated in these torture sessions, tying him, for example, to the door of his cell before hitting him on the head with a truncheon until he passed out. At the end of August and beginning of September 1995, the complainant was placed in solitary confinement and deprived of washing facilities. He then went on a hunger strike, demanding medical attention and an end to the discriminatory treatment against him.

2.24 After being transferred to Grombalia prison, the complainant continued his hunger strike from 28 November to 13 December 1997 and, once again, was beaten on the orders of the director.

2.25 The complainant states that, during his years of detention, he was only ever able to have one meeting with his lawyers, and that was in the presence of a prison officer.

2.26 After his release on 12 April 1998, the complainant was subjected to harassment, in the form of summonses for questioning, interrogation and daily supervision, until he fled the country for Switzerland on 22 June 1998, where he was granted refugee status in December 1998.

2.27 The complainant states that, since he fled the country, members of his family have been subjected to interrogation and other forms of humiliation, including a refusal to issue a passport to his mother.

2.28 The complainant provides a list of people who carried out acts of torture against him, namely, Ezzeddine Jnaieh, Director of State Security in 1991; Mohamed Ennaceur, Director of General Intelligence in 1995; Moncef Ben Gbila, senior officer in the State Security Service in 1987; Mojahid Farhi, lieutenant colonel; Belhassen Kilani, full lieutenant; Salim Boughnia, full lieutenant; Faouzi El Attrouss, major; Hédi Ezzitouni, full lieutenant; Abderrahman Guesmi, Interior Ministry official; Faycal Redissi, Interior Ministry official; Tahar Dlaiguia, Bouchoucha detention centre official; Mohamed Ben Amor, State Security; Hassen Khemiri, warrant officer; Mohamed Kassem, deputy director of Messadine prison in 1997; Habib Haoula, prison wing supervisor at Messadine prison; and Mohamed Zrelli, prison wing supervisor at Grombalia prison. The complainant adds that the then Minister for Internal Affairs, Abdallah Kallel, should be held responsible for the treatment to which he was subjected since, at a press conference held on 22 May 1991, the minister named him as the person responsible for a campaign of terror.

2.29 The complainant describes the after-effects of his torture and the conditions in which he was held, which include hearing problems (he submits a certificate from a Swiss ear, nose and throat specialist), rheumatism, skin disorders, an ulcer and mental problems.

2.30 As to whether all domestic remedies have been exhausted, the complainant argues that, although such remedies are provided in Tunisian law, they are unavailable in practice because of the bias of judges and the impunity granted to those responsible for violations. He adds that the regulations governing the activities of bodies which play a role in upholding human rights, such as the Higher Committee for Human Rights and Fundamental Freedoms and the Constitutional Council, prevent them from supporting complaints of torture. To back up his argument, he cites the reports of such non-governmental organizations as Amnesty International.

Substance of the complaint

3.1 The complainant maintains that the Tunisian Government has breached the following articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

> Article 1. The practices described above, such as "falka", the "roast chicken" position, "balanco", the "chair", etc., to which the complainant was subjected, constitute acts of torture.
>
> Article 2, paragraph 1. It is alleged that the State party not only failed to take effective measures to prevent torture, but even mobilized its administrative machinery and, in particular, its police force as an instrument of torture against the complainant.
>
> Article 4. It is alleged that the State party has not ensured that all the acts of torture to which the complainant has been subjected are offences under its criminal law.
>
> Article 5. It is alleged that the State party has instituted no legal proceedings against those responsible for torturing the complainant.
>
> Article 11. It is alleged that the authorities have not used their supervisory powers to prevent torture; instead, specific instructions have been given that torture is to be applied.
>
> Article 12. It is alleged that the State party has not carried out an investigation of the acts of torture committed against the complainant.

Article 13. It is alleged that the State party has not effectively upheld the complainant's right to lodge a complaint with the competent authorities.

Article 14. It is alleged that the State party has ignored the complainant's right to make a complaint and has thereby deprived him of his right to redress and rehabilitation.

Article 15. It is alleged that the complainant was sentenced in 1992 and 1995 to prison sentences on the basis of confessions obtained as a result of torture.

Article 16. The repressive measures and practices described above, such as solitary confinement, violation of the right to medical care and medicine and the right to send and receive mail, restriction of family visits, house arrest and harassment of his family, applied by the State party against the complainant constitute cruel, inhuman and degrading treatment or punishment.

3.2 The complainant also alleges that his right to practise his religion while in detention, his freedom of movement and his right to work were infringed by the administrative supervision measures applied against him, as was his right to continue his studies. He seeks redress for the harm inflicted on him and on his family, including cessation of the daily harassment of his family by the local police, and requests that they be granted passports.

State party's observations on admissibility

4.1 On 4 December 2001, the State party challenged the admissibility of the complaint on the grounds that the complainant had neither employed nor exhausted available domestic remedies. It maintains, first, that the complainant may still have recourse to the available domestic remedies, since, under Tunisian law, the limitation period for acts alleged to be, and characterized as, serious offences is 10 years.

4.2 The State party explains that, under the criminal justice system, the complainant may submit a complaint, from within Tunisia or abroad, to a representative of the Public Prosecutor's Office with jurisdiction in the area in question. He may also authorize a Tunisian lawyer of his own choice to submit such a complaint or request a foreign lawyer to do so with the assistance of a Tunisian colleague.

4.3 Under the same rules of criminal procedure, the Public Prosecutor will receive the said complaint and institute a judicial inquiry. In accordance with article 53 of the Code of Criminal Procedure, the examining magistrate to whom the case is referred will hear the author of the complaint. In the light of this hearing, he may decide to hear witnesses, question suspects, undertake on-site investigations and seize physical evidence. He may also order expert studies and carry out any actions which he deems necessary for the uncovering of evidence, both in favour of and against the complainant, with a view to discovering the truth and verifying facts on which the trial court will be able to base its decision.

4.4 The State party explains that the complainant may, in addition, lodge with the examining magistrate during the pre-trial proceedings an application for criminal indemnification for any harm suffered, over and above the criminal charges brought against those responsible for the offences against him.

4.5 If the examining magistrate deems that the public right of action is not exercisable, that the acts do not constitute a violation or that there is no prima facie case against the accused, he shall rule that there are no grounds for prosecution. If, on the other hand, the magistrate deems that the acts constitute an offence punishable by imprisonment, he shall send the accused before a competent court - which in the present instance, where a serious offence has been committed, would be the indictment chamber. All rulings by the examining magistrate are immediately communicated to all the parties to the proceedings, including the complainant who brought the criminal indemnification proceedings. Having been thus notified within a period of 48 hours, the complainant may, within four days, lodge an appeal against any ruling prejudicial to his interests. This appeal, submitted in writing or orally, is received by the clerk of the court. If there is prima facie evidence of the commission of an offence, the indictment chamber sends the accused before the competent court (criminal court or criminal division of a court of first instance), having given rulings on all the counts established during the proceedings. If it chooses, it may also order further information to be provided by one of its assessors or by the examining magistrate; it may also institute new proceedings, or conduct or order an inquiry into matters which have not yet been the subject of an examination. The decisions of the indictment chamber are subject to immediate enforcement.

4.6 A complainant seeking criminal indemnification may appeal on a point of law against a decision of the indictment chamber once it has been notified. This remedy is admissible when the indictment chamber rules that there are no grounds for prosecution; when it has ruled that the application for criminal indemnification is inadmissible, or that the prosecution is time-barred; when it has deemed the court to which the case has been referred to lack jurisdiction; or when it has omitted to make a ruling on one of the counts.

4.7 The State party stresses that, in conformity with article 7 of the Code of Criminal Procedure, the complainant may bring criminal indemnification proceedings before the court to which the case has been referred (criminal court or criminal division of the court of first instance) and, as appropriate, may lodge an appeal, either with the Court of Appeal if the offence in question is an ordinary offence, or with the criminal division of the Court of Appeal if it is a serious offence. The complainant may also appeal to the Court of Cassation.

4.8 Second, the State party maintains that the domestic remedies are effective. According to the State party, the Tunisian courts have systematically and consistently acted to remedy deficiencies in the law, and stiff sentences have been handed down on those responsible for abuses and violations of the law. The State party says that, between 1 January 1988 and 31 March 1995, judgements were handed down in 302 cases involving members of the police or the national guard under a variety of counts, 227 of which fell into the category of abuse of authority. The penalties imposed varied from fines to terms of imprisonment of up to several years.[a]

4.9 Third, the State party maintains that, given the complainant's "political and partisan" motives and his "offensive and defamatory" remarks, his complaint may be considered an abuse of the right to submit complaints.

4.10 The State party explains that the ideology and the political platform of the "movement" of which the complainant was an active member are based exclusively on religious principles, promoting an extremist view of religion which negates democratic rights and the rights of women. This is an illegal "movement", fomenting religious and racial hatred and employing violence. According to the State party, this "movement" perpetrated terrorist attacks which caused material damage and loss of life over the period 1990-1991. For that reason, and also because it is in breach of the Constitution and the law on political parties, this "movement" has not been recognized by the authorities.

4.11 The State party indicates that the complainant is making unsubstantiated allegations to the effect that "the Tunisian authorities have not criminalized these acts of torture ...". According to the State party, this allegation is given the lie by Act No. 99-89 of 2 August 1999, whereby the legislature amended and transposed a number of provisions of the Criminal Code and incorporated the definition of torture as set out in the Convention against Torture.

Complainant's comments on the State party's observations

5.1 In a letter of 7 May 2002, the complainant challenged the State party's argument that he was supposedly unwilling to turn to the Tunisian justice system and make use of domestic remedies.

5.2 The complainant believes that the recourse procedures are excessively protracted. He notes, in this context, that the appeal procedure against his conviction in 1995 comprised 18 sessions, lasting from June 1995 to the end of May 1996. According to the complainant, these delays were entirely due to the authorities, who repeatedly postponed consideration of his appeal because they were embarrassed to have to convict a person - who, to make matters worse, was a political opponent - for illegally attempting to leave the country. He says that this conviction would in itself be harmful to the image of the regime and that this made it harder to hand down a stiff sentence. He believes that this delay in a simple appeal procedure demonstrates that the lodging of a complaint of torture - even assuming that such a complaint would be accepted - would be an even more protracted process. The complainant also describes how, when his name appeared in various reports by non-governmental organizations, including after his conviction in 1995, the authorities reacted by worsening the conditions in which he was held, subjecting him to mental and corporal punishment and transferring him to prisons far from his family home, and harassing his family, who were placed under stricter supervision. In support of his arguments, he cites the case of Mr. Abderraouf Khemais Ben Sadok Laribi, who died in police custody as a result of ill-treatment. According to the complainant, even though the dead man's family lodged a complaint of intentional homicide against the Minister of the Interior on 9 August 1991, and even though the case received extensive media coverage, as a result of which his family received material compensation and an interview was granted with an adviser of the President, the case was closed without any effective investigation, while the minister in office at the time was given full protection by the Government.

5.3 The complainant also believes that the recourse procedures would not lead to any satisfactory remedies. He enumerates the efforts he made, to no avail, in 1992 to seek a medical examination and, in 1995, to secure protection from the judicial authorities against the ill-treatment to which he was being subjected. For that reason, it seemed unlikely to the complainant that he would obtain satisfaction from the judicial authorities. The complainant explains that his case with the magistrate was not an isolated instance and, in that context, submits an extract from a report by the Tunisian Committee for Human Rights and Freedoms. He maintains that the judicial system is not independent and gave him no protection when he was convicted in 1992 and 1995. He says that he has been a victim of the "culture of torture" in

Tunisia and that it was psychologically very difficult for him to submit his complaint to the Committee against Torture for fear of reprisals against his family. He adds, lastly, that his hunger strikes against his ill-treatment failed to bring any results, apart from some material concessions. Similarly, the letters he wrote to the administration of the prisons following these hunger strikes also proved unavailing. In addition, the transfer of the prison service to the Ministry of Justice has done nothing to change the complicity of the service in such practices. The complainant cites extracts from reports by the International Federation for Human Rights and the Tunisian Committee for Human Rights and Freedoms in support of his observation that complaints of torture do not succeed and that the authorities exert pressure to prevent the lodging of such complaints. He also maintains that the administrative supervision under which he was placed, which involved constant supervision by eight different authorities, accompanied by acts of intimidation, meant that lodging a complaint would have placed him in danger.

5.4 The complainant also challenges the State party's arguments that a Tunisian lawyer can be instructed from abroad to lodge a complaint.

5.5 The complainant describes serious encroachments by the authorities on the free and independent exercise of the legal profession. According to the complainant, lawyers who dare to defend complaints of torture are subject to harassment and other abuses, including prison sentences. As an example, he cites the cases of the lawyers Néjib Hosny, Béchir Essid and Anouar Kosri, and quotes extracts from reports and statements by Amnesty International, the World Organization against Torture, the International Federation for Human Rights and the International Commission of Jurists. He adds, also on the basis of these reports by non-governmental organizations, that none of the complaints lodged by victims of torture over recent years, particularly following the promulgation in 1988 of article 13 bis of the Code of Criminal Procedure, providing for the possibility of medical visits, have been followed up. He also explains that, in certain cases, medical checks have been allowed after a long delay, once all traces of torture have disappeared, and that the checks are sometimes carried out by compliant doctors who will fail to find anything wrong with the detainees' physical condition, even if there are traces of torture. The complainant believes that, in these circumstances, it would not make much difference to appoint a lawyer.

5.6 The complainant also cites as an obstacle the fact that not only is legal aid not an established practice in Tunisia, but that the procedures involved are not accompanied by the necessary safeguards.

5.7 The complainant also stresses that the lodging of a complaint from abroad with the Tunisian authorities is likely to be covered by article 305, paragraph 3, of the Tunisian Code of Criminal Procedure, which provides that "any Tunisian who commits any of the offences mentioned in section 52 bis of the Criminal Code abroad may be prosecuted and brought to trial, even if the aforementioned offences are not punishable under the legislation of the State in which they were committed". The complainant believes that a complaint submitted by him from abroad could be construed as an insult against the regime, given that the State party has declared him to be a terrorist.

5.8 The complainant also explains that his situation as a political refugee in Switzerland precludes him from successfully concluding any proceedings that he might initiate, given the restrictions placed on contacts between refugees and the authorities in their own countries. He explains that severance of all relations with the country of origin is one of the conditions on which the status of refugee is granted, and that it plays an important role when consideration is being given to withdrawing asylum. According to the complainant, such asylum would effectively end if the refugee should once again, of his own volition, seek the protection of his country of origin, for example by maintaining close contacts with the authorities or paying regular visits to the country.

5.9 The complainant also challenges the affirmation by the State party of the existence of available remedies. He argues that the State party has confined itself to repeating the procedure described in the Code of Criminal Procedure, which is far from being applied in reality, particularly where political prisoners are concerned. In support of his argument, the complainant cites reports by Amnesty International, Human Rights Watch, the World Organization against Torture, the National Consultative Commission on Human Rights in France and the National Council for Fundamental Freedoms in Tunisia. The complainant also refers to the Committee against Torture's concluding observations on Tunisia, dated 19 November 1998. He stresses that the Committee against Torture recommended, among other things, that the State party should, first, ensure the right of victims of torture to lodge a complaint without the fear of being subject to any kind of reprisal, harassment, harsh treatment or prosecution, even if the outcome of the investigation does not prove their allegations, and to seek and obtain redress if those allegations are proven correct; second, ensure that medical examinations are automatically provided following allegations of abuse and that autopsies are performed following any deaths in custody; and third, ensure that the findings of all investigations concerning cases of torture are made public and that such information includes details of any offences committed, the names of the offenders, the dates, places and circumstances of the incidents and the punishment received by those found guilty. The Committee also noted that many of the regulations existing in Tunisia for the protection of arrested persons were not adhered to in practice. It also expressed its concern over the wide gap that existed between law and practice with regard to the protection of human rights, and was particularly disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police, which, in certain cases, resulted in death in custody.

5.10 The complainant also notes the lack of independence of the judicial system and the bodies set up to monitor application of the law. Lastly, he emphasizes that the State party's reply, in the current case, shows that no domestic investigation has been held into the rather detailed information contained in the complaint under consideration.

5.11 The complainant also challenges the State party's argument that the domestic remedies are effective.

5.12 With regard to the 302 cases involving police or national guard officers against whom, according to the State party, sentences have been handed down, the complainant points out that there is no tangible proof that these cases, which have not been published or made public in any way, actually took place; that the 277 cases cited by the State party as examples of abuse of authority are not relevant to the case in question; and that the State party refers only to cases which do not tarnish the image of Tunisia and therefore include no case of inhuman or degrading treatment. He explains that the cases adduced by the State party took place during the period 1988-1995 and were covered by the concluding observations of the Committee against Torture mentioned above.

5.13 Lastly, the complainant believes that the State party's comments regarding his membership of the ENNAHDA movement and the aspersions cast upon it demonstrate the continued discrimination against the opposition, which is still considered illegal. According to the complainant, with its references in this context to terrorism, the State party is demonstrating its bias and, by extension, the impossibility of obtaining any remedy in Tunisia. He also stresses that the prohibition of torture and inhuman or degrading treatment is a provision which admits of no exception, including for terrorists.

5.14 Finally, in the light of his previous explanations, the complainant rejects the observation by the State party to the effect that the present complaint constitutes an abuse of the right to submit complaints, an argument which, the complainant believes, shows that the State party has decided to resort to a political manoeuvre which has no legal relevance.

Additional observations from the State party on admissibility

6.1 On 8 November 2002 the State party again challenged the admissibility of the complaint. It maintains, first, that the complainant's claims about recourse to the Tunisian justice system and the use of domestic remedies are baseless and unsupported by any evidence. It adds that appeal procedures do not take an unreasonable time, and that proceedings in respect of the allegations made in the complaint are not time-barred, since the time limit for bringing proceedings in such cases is 10 years. Second, the State party considers that the complainant's claims that a complaint lodged from abroad with the Tunisian authorities is be covered by article 305, paragraph 3, of the Code of Criminal Procedure, which permits the prosecution of those guilty of terrorist acts, are baseless. Third, the State party affirms that, contrary to the complainant's allegations, it is open to him to instruct a lawyer of his choice to lodge a complaint from abroad. The State party adds that the complainant's refugee status does not deprive him of his right to lay complaints before the Tunisian courts. Fourth, it maintains that domestic remedies before the Tunisian judicial authorities are not only possible in the current case but effective, as shown by the fact that victims of violations in Tunisia have obtained satisfaction. Lastly, the State party indicates that its reply of 4 December 2001 was not intended to be defamatory to the complainant, who is, nonetheless, abusing the right to submit complaints.

Committee's decision on admissibility

7.1 At its twenty-ninth session, the Committee considered the admissibility of the complaint, and in a decision of 20 November 2002 declared it admissible.

7.2 With regard to the issue of the exhaustion of domestic remedies, the Committee noted that the State party challenged the admissibility of the complaint on the grounds that available and effective domestic remedies had not been exhausted. In the present case, the Committee noted that the State party had provided a detailed description both of the remedies available, under law, to any complainant and of cases where such remedies had been applied against those responsible for abuses and for violations of the law. The Committee considered, nevertheless, that the State party had not sufficiently demonstrated the relevance of its arguments to the specific circumstances of the case of this complainant, who claims to have suffered violations of his rights. It made clear that it did not doubt the information provided by the State party about members of the security forces being prosecuted and convicted for a variety of abuses. But the Committee pointed out that it could not lose sight of the fact that the case at issue dates from 1987 and that, given a statute of limitations of 10 years, the question arose in the present case of whether, failing interruption or suspension of the statute of limitations - a matter on which the State party had provided no information - action before the Tunisian courts would be disallowed. The Committee noted, moreover, that the complainant's allegations related to facts that had already been reported publicly to the authorities. The Committee pointed out that to date it remained unaware of any investigations voluntarily undertaken by the State party. The Committee therefore considered it very unlikely in the present case that the complainant would obtain satisfaction by exhausting domestic remedies, and decided to proceed in accordance with article 22, paragraph 5 (b), of the Convention.

7.3 The Committee noted, in addition, the argument by the State party to the effect that the complainant's claim was tantamount to abuse of the right to lodge a complaint. The Committee considered that any report of torture was a serious matter and that only through consideration of the merits could it be determined whether or not the allegations were defamatory. Furthermore, the Committee believed that the complainant's political and partisan commitment adduced by the State party did not impede consideration of this complaint, in accordance with the provisions of article 22, paragraph 2, of the Convention.

State party's observations on the merits

8.1 In its observations of 3 April 2003 and 25 September 2003, the State party challenges the complainant's allegations and reiterates its position regarding admissibility.

8.2 In relation to the allegations concerning the State party's "complicity" and inertia vis-à-vis "practices of torture", the State party indicates that it has set up preventive[b] and dissuasive[c] machinery to combat torture so as to prevent any act which might violate the dignity and physical integrity of any individual.

8.3 Concerning the allegations relating to the "practice of torture" and the "impunity of the perpetrators of torture", the State party considers that the complainant has not presented any evidence to support his claims. It emphasizes that, contrary to the complainant's allegations, Tunisia has taken all necessary legal and practical steps, in judicial and administrative bodies, to prevent the practice of torture and prosecute any offenders, in accordance with articles 4, 5 and 13 of the Convention. Equally, according to the State party, the complainant has offered no grounds for his inertia and failure to act to take advantage of the effective legal opportunities available to him to bring his case before the judicial and administrative authorities (see paragraph 6.1). Concerning the Committee's decision on admissibility, the State party emphasizes that the complainant cites not only "incidents" dating back to 1987, but also "incidents" dating from 1995, 1996 and 1997, that is, a time when the Convention against Torture was fully incorporated into Tunisian domestic law and when he reports "ill-treatment" that he claims to have suffered while being held in "Tunis central prison" and "Grombalia prison". Hence the statute of limitations has not expired, and the complainant should urgently act to interrupt the limitation period, either by contacting the judicial authorities directly, or by performing an act which has the effect of interrupting the limitation. The State party also mentions the scope for the complainant to lodge an appeal for compensation for any serious injury caused by a public official in the performance of his duties,[d] noting that the limitation period stands at 15 years.[e] The State party points out that the Tunisian courts have always acted systematically to remedy deficiencies in the law on acts of torture (see paragraph 4.10).

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8.4 As for the allegations of failure to respect guarantees relating to judicial procedure, the State party regards them as unfounded. According to the State party, the authorities did not prevent the complainant from lodging a complaint before the courts - on the contrary, he opted not to make use of domestic remedies. As for the "obligation" of judges to ignore statements made as a result of torture, the State party cites article 15 of the Convention against Torture, and considers that it is incumbent on the accused to provide the judge with at least basic evidence that his statement has been made in an unlawful manner. In this way he would confirm the truth of his allegations by presenting a medical report or a certificate proving that he had lodged a complaint with the public prosecutor's office, or even by displaying obvious traces of torture or ill-treatment to the court. However, the State party points out that the complainant did not deem it necessary to lodge a complaint either during his detention or during his trial; this formed part of a strategy adopted by the "ENNAHDA" illegal extremist movement in order to discredit Tunisian institutions by systematically alleging acts of torture and ill-treatment but not making use of available remedies.

8.5 Concerning the allegations relating to his confession, the State party considers baseless the complainant's claim that he was found guilty on the sole basis of his confession. It points out that, under the last paragraph of article 69 and article 152 of the Code of Criminal Procedure, a confession on the part of the accused cannot relieve the judge of the obligation to seek other evidence, while confessions, like all items of evidence, are a matter for the independent appreciation of the judge. On that basis, it is a constant of Tunisian case law that an accused cannot be found guilty on the sole basis of a confession.[f] In the case in question, the basis for the court's decision, in addition to the confessions made by the complainant throughout the judicial proceedings, was testimony by his accomplices. The State party also rejects as baseless the complainant's allegation that he had signed a transcript without being aware of its content, pointing out that the law requires that the transcript be read to the accused before signature, and that this was done. Concerning the complainant's allegations that the proceedings in his case were both summary and protracted, the State party indicates that the length of the proceedings is dictated by respect for the right to a defence. In addition, with the aim of preventing counsel or even the prosecution from engaging in delaying tactics and seeking the postponement of hearings, the State party points out that rulings by judges are always accompanied by a statement of grounds, as are rulings postponing hearings relating to the criminal proceedings against the complainant.

8.6 Concerning the allegations relating to prison conditions, and in particular the comparison of prisons to "concentration centres", the State party considers them unfounded. Concerning the arrangements for transfers between one prison and another, which the complainant considers to constitute an abuse, the State party points out that, in keeping with the applicable regulations, transfers are decided upon in the light of the different stages of the proceedings, the number of cases and the courts which have competence for specific areas. The prisons are grouped in three categories: for persons held awaiting trial; for persons serving custodial sentences; and semi-open prisons for persons found guilty of ordinary offences, which are authorized to organize agricultural labour. According to the State party, as the status of the complainant had changed from that of remand prisoner to that of a prisoner serving a custodial sentence, and bearing in mind the requirements as to investigations in his case or in other similar cases, he was transferred from one prison to another, in accordance with the applicable regulations. Moreover, the conditions in which the complainant was held, wherever he was held, were in keeping with the prison regulations governing conditions for holding prisoners in order to ensure prisoners' physical and moral safety. The State party points out that prisoners' rights are scrupulously protected in Tunisia, without any discrimination, whatever the status of the prisoner, in a context of respect for human dignity, in accordance with international standards and Tunisian legislation. Medical, psychological and social supervision is provided, and family visits are allowed.

8.7 Contrary to the allegations that the medical consequences suffered by the complainant are due to torture, the State party rejects any causal link. Moreover, according to the State party, contrary to the complainant's allegations that his request for a medical examination was refused (see paragraph 2.15), he enjoyed appropriate care and proper medical supervision, as stipulated in the prison regulations, throughout his stay in prison.

8.8 Concerning the allegations that he was denied visits, according to the State party the complainant regularly received visits from his brother Belhassen Abdelli, in accordance with the prison regulations, as demonstrated by the visitors' records in the prisons in which he was held.

8.9 Concerning the allegations relating to article 11 of the Convention, the State party rejects them and refers to systematic monitoring[g] of compliance with rules, instructions, methods and practices of interrogation and provisions relating to the holding[h] and treatment of persons who have been arrested, detained or imprisoned.[i]

8.10 Concerning the allegations relating to administrative supervision and the social situation of Mr. Abdelli's family, the State party explains that administrative supervision cannot be equated with ill-treatment under the Convention against Torture because it is in fact an additional punishment for which provision is made in article 5 of the Criminal Code. According to the State party, the application of this measure did not prevent the complainant from continuing to live a normal life, and in particular to pursue his studies following his release in 1994. It is pointed out that the fact that it was not possible for those studies to be completed could not constitute proof of alleged restrictions imposed within the framework of administrative supervision. According to the State party, the allegations of abuse are unfounded, and the summonses produced by the complainant do not constitute ill-treatment or an abuse of the administrative supervision procedure. In addition, the State party indicates that the summons dating from 1998 constitutes irrefutable evidence that the complainant's allegations are false. It also maintains that the complainant's family is not suffering from any form of harassment or restrictions, that the complainant's mother is receiving a pension following the death of her husband, and that the family is living in decent circumstances.

Observations by the complainant

9.1 In his observations dated 20 May 2003, the complainant sought to respond to each of the points contained in the above observations by the State party.

9.2 Concerning the preventive arrangements for combating torture, the complainant considers that the State party has confined itself to listing an arsenal of laws and measures of an administrative and political nature which, he says, are not put into effect in any way. To support this assertion he cites reports prepared by the non-governmental organization "National Council for Fundamental Freedoms in Tunisia" (CNLT).[j]

9.3 In relation to the establishment of a legislative reference system to combat torture, the complainant considers that article 101 bis of the Code of Criminal Procedure was adopted belatedly in 1999, in particular in response to the concern expressed by the Committee against Torture at the fact that the wording of article 101 of the Criminal Code could be used to justify serious abuses involving violence during questioning. He also claims that this new article is not applied, and attaches a list of the victims of repression in Tunisia between 1991 and 1998 prepared by the non-governmental organization "Vérité-Action". He also points out that the cases cited by the State party to demonstrate its willingness to act to combat torture relate only to accusations of abuse of authority and violence and assault, as well as offences under the ordinary law, and not to cases of torture leading to death or cases involving physical and moral harm suffered by the victims of torture.

9.4 Concerning the practice of torture and impunity, the complainant maintains that torturers do enjoy impunity, and that in particular no serious investigation has been carried out into those suspected of committing crimes of torture. He considers that, in his own case, the State party's observations display a selective approach to the facts by shifting from 1987 to 1996, whereas the most serious violations occurred in 1991. The complainant also states that, whereas a State governed by the rule of law should automatically follow up any report of a criminal act which may be regarded as a serious offence, the Tunisian authorities are content to accuse the alleged victims of terrorism and manipulation. The complainant considers that his allegations are at the very least plausible in terms of the detail of the torture he suffered (names, places and treatment inflicted), but the State party contents itself with a blanket denial. The complainant did not mention torturers because of their membership of the security forces, but because of specific and repeated attacks on his physical and moral integrity and his private and family life. The initiation of an investigation designed to check whether a person belonging to the security forces has committed acts of torture or other acts does not constitute a violation of the presumption of innocence but a legal step which is vital in order to investigate a case and, if appropriate, place it before the judicial authorities for decision. In relation to appeals before the courts, the complainant considers that the State party has confined itself to repeating the description of legal options open to victims set out in its previous submissions without responding to the last two sentences of paragraph 7.2 of the decision on admissibility. He reiterates that the theoretical legal options described by the State party are inoperative, while listing in support of this conclusion cases in which the rights of the victims were ignored.

9.5 Concerning the complainant's inertia and lack of action, he considers that the State party is inconsistent in holding that acts of torture are regarded as serious offences in Tunisian law and accordingly prosecuted automatically, while awaiting a complaint by the victim before taking action. He also re-emphasizes his serious efforts to demand a medical examination and an investigation into the torture he had suffered.

9.6 Concerning the allegations relating to the trial, the complainant considers that the State party remains silent concerning the conditions in which his trial took place, and has failed to embark on any investigation to check the allegations of torture that he made before the judge.

9.7 Concerning the allegations relating to his confession, the complainant maintains that his confession was extracted under torture, and, citing the reports of CNLT, states that such methods are used in political trials and sometimes in trials involving offences under ordinary law. Concerning the length of the trials, the complainant states that the 1992 trial was summary in nature because it formed part of a spate of trials aimed at putting as many members of the ENNAHDA movement as possible behind bars, while the 1995 trial was protracted since the lawyers insisted on the principle of double jeopardy. The complainant also notes that the State party is silent about his arrest a few months after the Presidential pardon of 1987.

9.8 Concerning the conditions in which he was held, the complainant considers that the State party is taking refuge behind legal texts in order to dismiss the detailed information he provides. He points out that the question of transferring him for the purposes of the investigation never arose, and calls on the State party to prove the contrary.

9.9 In relation to visits, the complainant explains that each time he was transferred, his family had difficulty discovering his new place of detention. He considers that denial of visits constituted a form of revenge against him each time he sought to exercise a right and took action to that end, for example in the form of hunger strikes. He points out that the prison entry and exit logs can confirm his claims. In addition, the complainant's family found it difficult to exercise the right to visit him because of the conditions imposed on the visitors - the complainant's mother was ill-treated to make her remove her scarf, and was made to wait many hours for a visit lasting a few minutes.

9.10 Concerning the allegations relating to the provision of care, the complainant draws the Committee's attention to the medical certificate contained in his file. Concerning the treatment cited by the State party, the complainant demands the production of his medical file by the State party.

9.11 In relation to administrative supervision, the complainant considers that any punishment, including those provided for in the Tunisian Criminal Code, may be characterized as inhuman and degrading if the goal pursued does not include the reconciliation of the offender with his social environment. He points out in particular that his resumption of his studies prompted a tightening of the administrative supervision, including imposition of an obligation to report to the police twice a day, insistent surveillance by the university police and a ban on contacts with the other students. Concerning his summonses, the complainant states that the three years which elapsed between his two summonses in 1995 and 1998 corresponded to the period he spent in prison after being arrested again in 1995. According to the complainant, administrative supervision serves only to bolster the police's stranglehold over the freedom of movement of former prisoners.

9.12 Concerning the situation of his family, the complainant records the suffering caused by the police surveillance and various forms of intimidation. He mentions that two of his brothers (Nabil and Lofti) were imprisoned in advance of his arrest, and that his mother was detained for a whole day. In addition, according to the complainant, the authorities' deliberate decision to move him far from his family affected the pattern of the visits.

9.13 Concerning the application of article 11 of the Convention, the complainant considers that the State party once again contents itself with a theoretical description of its legal arsenal and a reference to the activities of the Higher Committee on Human Rights and Fundamental Freedoms, a non-independent institution. Citing documents issued by non-governmental organizations,[k] the complainant notes violations relating to the supervision of detention and police custody, such as manipulation of the dates when arrests were recorded, and incommunicado detention. He notes that the State party has not responded to his precise allegations relating to his detention for over a month in 1987, for 56 days in 1991 and for 18 days in 1995.

9.14 In relation to the ENNAHDA movement, the complainant maintains that the organization is well known for its democratic ideals and its opposition to dictatorship and impunity, contrary to the State party's explanations. In addition, he challenges the accusations of terrorism levelled by the State party, which in fact form part of a complete fabrication.

9.15 Lastly, according to the complainant, the State party is endeavouring to place the entire burden of proof on the victim, accusing him of inertia and failure to act, seeking protection behind a panoply of legal measures which theoretically enable victims to lodge complaints and evading its duty to ensure that those responsible for crimes, including that of torture, are automatically prosecuted. According to the complainant, the State party is thus knowingly ignoring the fact that international law and practice in relation to torture place greater emphasis on the role of States and their duties in order to enable proceedings to be completed. The complainant notes that the State party places the burden of proof on the victim alone, even though the supporting evidence, such as legal files, registers of police custody and visits, and so on, is in the sole hands of the State party and unavailable to the complainant. Referring to European case law,[l] the complainant points out that the European Court and Commission call on States parties, in the case of allegations of torture or ill-treatment, to conduct an effective investigation into the allegations of ill-treatment and not to content themselves with citing the theoretical arsenal of options available to the victim to lodge a complaint.

Consideration of the merits

10.1 The Committee examined the complaint, taking due account of all the information provided to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

10.2 The Committee took note of the State party's observations of 3 April 2003 challenging the admissibility of the complaint. It notes that the points raised by the State party are not such as to prompt reconsideration of the Committee's decision on admissibility, notably owing to the lack of new or additional information from the State party on the matter of investigations voluntarily carried out by the State party (see paragraph 7.2). The Committee therefore does not consider that it should review its decision on admissibility.

10.3 The Committee therefore proceeds to examine the merits of the complaint, and notes that the complainant alleges violations by the State party of article 1, article 2, paragraph 1, article 4, article 5, article 11, article 12, article 13, article 14, article 15 and article 16 of the Convention.

10.4 The Committee notes that article 12 of the Convention places an obligation on the authorities to proceed automatically to a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or ill-treatment has been committed, no special importance being attached to the grounds for the suspicion.[m]

10.5 The Committee notes that the complainant maintains that he complained of acts of torture committed against him to the judge at his trials in 1992 and 1995. The complainant states that in 1992 he requested a medical examination, which was refused, and that in 1995 he sought the protection of the judge of the Tunis court of first instance against the torture inflicted on him daily at the prison. The Committee notes that the State party challenges the complainant's claim that he was denied a medical examination, without commenting on the treatment of which the complainant complained to the judge or providing the results of the medical checks allegedly carried out on Mr. Abdelli while he was being held. The Committee also takes note of the State party's failure to comment on the precise allegations set out above relating to 1995. Lastly, the Committee notes the existence of detailed and substantiated information provided by the complainant concerning his hunger strikes in Tunis central prison in 1995 and in Grombalia prison from 28 November to 13 December 1997, mounted in order to protest against the treatment he had suffered and to secure medical care. The complainant refers to letters sent to the prison's administration following his hunger strikes, which produced no result. The Committee notes that the State party has not commented on this information. The Committee considers that these elements, taken together, should have been enough to trigger an investigation, which was not held, in breach of the obligation to proceed to a prompt and impartial investigation under article 12 of the Convention.

10.6 The Committee also observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence, and that it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this provision of the Convention.”

10.7 The Committee notes, as already indicated, that the complainant explains that he did complain to judges in 1992 and 1995 of the treatment inflicted on him, resorted to hunger strikes and wrote to the prison authorities to complain about the conditions imposed on him. The Committee regrets that the State party has not responded or provided the necessary clarification on these points. Moreover, and notwithstanding the jurisprudence under article 13 of the Convention, the Committee notes the State party's position maintaining that the complainant should have made formal use of domestic remedies in order to lodge his complaint, for example by presenting to the court a certificate proving that a complaint had been lodged with the office of the public prosecutor, or displaying obvious traces of torture or ill-treatment, or submitting a medical report. On this latter point, to which the Committee wishes to draw its attention, it is clear that the complainant maintains that his request for a medical examination in 1992 was refused, and that the State party challenges this allegation on the grounds that the complainant enjoyed appropriate care and proper medical supervision, as stipulated in the prison regulations, throughout his stay in prison. The Committee observes that this response by the State party is categorical and general and does not necessarily answer the complainant's precise affirmation that he asked the judge in 1992 to order a medical examination. Finally, the Committee refers to its consideration of the report submitted by Tunisia in 1997, at which time it recommended that the State party should arrange for medical examinations to be organized systematically when allegations of abuse were made.

10.8 In the light of its practice relating to article 13 and the observations set out above, the Committee considers that the breaches enumerated are incompatible with the obligation stipulated in article 13 to proceed to a prompt investigation.

10.9 Finally, the Committee considers that there are insufficient elements to make a finding on the alleged violation of other provisions of the Convention raised by the complainant at the time of adoption of this decision.

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 12 and 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

12. Pursuant to rule 112, paragraph 5 of its rules of procedure, the Committee urges the State party to conduct an investigation into the complainant's allegations of torture and ill-treatment, and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.

Notes

[a] The examples cited by the State party are available in the file.

[b] This includes instruction in human rights values in training schools for the security forces, the Higher Institute of the Judiciary and the National School for training and retraining of staff and supervisors in prisons and correctional institutions; a human rights-related code of conduct aimed at senior law enforcement officials; and the transfer of responsibility for prisons and correctional institutions from the Ministry of the Interior to the Ministry of Justice and Human Rights.

[c] A legislative reference system has been set up: contrary to the complainant's allegation that the Tunisian authorities have not criminalized acts of torture, the State party indicates that it has ratified the Convention against Torture without reservations, and that the Convention forms an integral part of Tunisian domestic law and may be invoked before the courts. The provisions of criminal law relating to torture are severe and precise (Criminal Code, art. 101 bis).

[d] Under the Administrative Court Act of 1 June 1972, the State may be held responsible even when it is performing a sovereign act if its representatives, agents or officials have caused material or moral injury to a third person. The injured party may demand from the State compensation for the injury suffered, under article 84 of the Code of Obligations and Contracts, without prejudice to the direct liability of its officials vis-à-vis the injured parties.

[e] Administrative Court, judgement No. 1013 of 10 May 1993 and judgement No. 21816 of 24 January 1997.

[f] Judgement No. 4692 of 30 July 1996, published in the *Revue de Jurisprudence et Législation* (R.J.L); judgement No. 8616 of 25 February 1974, R.J.L. 1975; and judgement No. 7943 of 3 September 1973, R.J.L 1974.

[g] In addition to legislation, protective institutional machinery has been set up by stages, including surprise visits to prisons by the Chairman of the Higher Committee for Human Rights and Fundamental Freedoms, and the creation on 31 July 2000 of a post of "judge for the enforcement of sentences" who is responsible for closely monitoring the enforcement of custodial sentences and conducting periodic visits to prisons.

[h] Act No. 99-90 of 2 August 1999 amended and supplemented a number of provisions of the Code of Criminal Procedure, and in particular reduced the length of police custody to three days, renewable once only for a further three days. Under the Act, criminal investigation officers may not hold a suspect for more than three days; they must notify the public prosecutor, who may, by written decision, extend the length of police custody once only for a further three days. The criminal investigation officer must inform the suspect of the measure being taken against him and its duration, and his rights under the law, notably the possibility of undergoing a medical examination during his period in custody. The officer must also inform one of the suspect's parents or children, brothers or sisters or spouse, as selected by him, of the measure being taken against him. These safeguards were further strengthened under the constitutional reform of 26 May 2002, which granted constitutional status to supervision of police custody by the judiciary, stipulating that this custodial measure could be imposed only by order of a court.

[i] The Act of 24 April 2001 on conditions for the imprisonment and treatment of detainees strengthened safeguards for the protection of prisoners and provided for prisoners to be prepared for a working life by offering them opportunities for paid employment.

[j] "Le procès-Tournant: A propos des procès militaires de Bouchoucha et de Bab Saadoun en 1992", October 1992; "Pour la réhabilitation de l'indépendance de la justice", April 2000-December 2001.

[k] Alternative report by FIDH to Tunisia's second periodic report to the Committee against Torture; communiqué issued on 20 February 2003 by the International Association for Support for Political Prisoners in Tunisia.

[l] Guide to Jurisprudence on Torture and Ill-Treatment - Article 3 of the European Convention for the Protection of Human Rights, Debra Long (APT); *Ribitsch v. Austria*; *Assenov v. Bulgaria*.

[m] Communication No. 59/1996 (*Encarnación Blanco Abad v. Spain*).

[n] Communications No. 6/1990 (*Henri Unai Parot v. Spain*) and No. 59/1996 (*Encarnación Blanco Abad v. Spain*).

Communication No. 189/2001

Submitted by:	Mr. Bouabdallah LTAIEF (represented by the non-governmental organization Vérité-Action)
On behalf of:	The complainant
State party:	Tunisia
Date of submission:	30 June 2000

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2003,

Having concluded its consideration of complaint No. 189/2001, submitted to the Committee against Torture by Mr. Bouabdallah Ltaief under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. Bouabdallah Ltaief, a Tunisian citizen, born on 2 June 1967 in Gabès, Tunisia, and resident in Switzerland since 18 March 1999, where he has refugee status. He claims to have been the victim of violations by Tunisia of the provisions of article 1, article 2, paragraph 1, article 4, article 5, article 11, article 12, article 13, article 14, article 15 and article 16 of the Convention. He is represented by the non-governmental organization Vérité-Action.

1.2 Tunisia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and made the declaration under article 22 of the Convention on 23 September 1988.

Facts as submitted by the complainant

2.1 The complainant states that he was an active member of the Islamist organization ENNAHDA (formerly MTI). In July 1987, he was detained while on a camping trip with scouts. The complainant says that he asked the police officers if they were acting on the basis of a judicial warrant, but he was finally forced at gunpoint to remain silent. He states that, during his interrogation, he was deprived of food and sleep and subjected to intimidation by being forced to witness other detainees being tortured. He says that, despite requests to the local police, his family were unable to ascertain where he was being held and that his father was even detained himself for an entire day, because he had been making such representations.

2.2 While being held on Interior Ministry premises, in the cells of the national guard in Bouchoucha and in the police headquarters of Gabès governorate, the complainant maintains that he was subjected to eight torture sessions and provides a detailed description of these sessions.

2.3 He describes what is customarily known as the "roast chicken" position, in which the victim is stripped naked, his hands tied and his legs folded between his arms, with an iron bar placed behind his knees, from which he is then suspended between two tables and beaten, in particular on the soles of his feet. The complainant says that his torturers blew cigarette smoke into his face to choke him.

2.4 The complainant also claims to have been tortured in the "upside-down" position whereby the victim is stripped, hands tied behind his back and suspended from the ceiling by a rope tied to one or both of his feet, with his head hanging downwards. In this position he is kicked and struck with sticks and whips until he passes out. The complainant adds that his torturers tied a piece of string to his penis which they then repeatedly tugged, as if to tear his penis off.

2.5 The complainant claims to have been subjected to the "falka", in which the victim's feet are tied to a bar which is then lifted so that his torturers can lash the soles of his feet.

2.6 The complainant also claims to have been subjected to the "chair" torture, in which the victim is stripped and tied to a chair, with his hands behind his back, and beaten across the face, chest and abdomen. He says that his torturers mopped up his blood with paper which they then stuffed into his mouth to stifle his cries.

2.7 The complainant was also prevented from sleeping, from using the lavatory and from washing.

2.8 According to the complainant, following this torture and ill-treatment, he was twice admitted to the emergency service at Gabès hospital, but was unable to receive any visitors or to contact his family or his lawyer.

2.9 The complainant states that, in these conditions, he was forced to make confessions and that at the beginning of September 1987, he was placed in the 9 April prison in a solitary cell and deprived of any contacts with the outside world.

2.10 The complainant was then brought before the examining magistrate in the presence, for the first time, of his lawyers. The examining magistrate would not, however, allow any exchange of information to take place between the complainant and his lawyers, refused to let the lawyers speak, dictated the prosecution's case against the complainant to his secretary, but was unable to get the complainant and his counsel to sign the transcript of the hearing.

2.11 The complainant's case then went before the State Security Court (Cour de Sûreté de l'Etat), where it continued for an entire month and, according to the complainant, was unanimously regarded by the international press as a complete travesty. The complainant says that, prior to the proceedings, the Director of State Security, Mr. Moncef Ben Gbila, attempted unsuccessfully to persuade him to give false testimony against other detainees, including officials of ENNAHDA, in exchange for his release. According to the complainant, during the proceedings, the magistrate of the State Security Court, Mr. Hechmi Zemmal, forced him to keep his statements brief, thus compromising his right to a defence. In addition, when the complainant was brought face to face with a witness who claimed to have been the victim of an act of violence committed by him, this witness, according to the complainant, repeatedly stated that the complainant was not the person in question. The defence counsel demanded that he be acquitted for lack of evidence, but the magistrate found that the witness had been affected by the shock of having to face his aggressor once again and, on 27 September 1987, sentenced the complainant to 10 years' immediate imprisonment and hard labour and 10 years' administrative supervision.[b]

2.12 The complainant stresses that, like other victims of torture, he was given no opportunity in the examination proceedings and the trial to describe his experiences of torture or to denounce those responsible. According to the complainant, judges brusquely interrupt to prevent anyone, even lawyers, mentioning this topic, and the fear of being subjected again to torture, if the detainee dares raise this issue with the judge, acts as a strong deterrent in the intimidation process.

2.13 The complainant was subsequently moved around repeatedly both within and between the country's various penitentiary establishments. Thus, he was held in isolation with three political prisoners, Fethi Jebrane, Mohamed Charrada and Faouzi Sarraj, in the Borj Erroumi prison in Bizerte, from 1987 to 1992; from 1992 to 1993, he was transferred to a common criminals' cell; from 1993 to 1994, he was held in solitary confinement in a small cell; and from 1994 to 1996 he was held together with two ENNAHDA officials - Habib Ellouz and Ajmi Lourimi - and then transferred to El Kef prison and to the central prison in Tunis, from 1996 to 1997.

2.14 The complainant says that the living standards and the treatment meted out to prisoners by the prison authorities made his imprisonment an intolerable ordeal. He refers to the prison crowding, the dirty conditions, the contagious diseases and the lack of medical care. He claims that the punishment cells in which he was held in the Borj Erroumi prison were extremely cramped, dark, with no water or WC, and very damp; his rations were limited to one piece of bread a day and he was forced to wear dirty, flea-infested clothes. He maintains that the political prisoners were subjected to discriminatory treatment, as part of a general policy of physical and mental aggression. In support of this claim he explains that he was repeatedly barred from having contact with others and from engaging in joint prayers. He adds that he was deprived of medical care, despite repeated requests, threats to go on hunger strike and his refusal to take exercise in the prison yard. According to the complainant, his family visits were restricted to 10 minutes and the women visitors were forced to remove their veils. The complainant adds that, in punishment cell No. 2 at Borj Erroumi prison, he was stripped naked and tied hand-and-foot to a cot for three days on end. He says that he was then subjected to this punishment again for a period of six days, after requesting medical care for kidney pains. In addition, the warders punched, slapped and kicked him. According to the complainant, in February 1994, the prison director beat him viciously while he was on hunger strike and had been placed in shackles and, in the process, broke his right arm. When the complainant returned from hospital, the prison director ordered him to be returned to the punishment cells, where he was left shackled for eight days, naked and without blankets, thereby aggravating his kidney pains. In El Kef prison, where he spent 10 days in the punishment cells, he had a blanket only from 10 p.m. to 6 a.m., despite the cold temperatures in the town, with the result that for the last three days he was unable to walk. Finally, a few days before his release, he was placed together with 24 other prisoners in Tunis central prison in a cell measuring only 3.5 metres by 2 metres. According to the complainant, with only one very small window high up on the cell wall, it was difficult to breathe, and the overcrowding was so bad that the detainees were unable even to sit.

2.15 The complainant explains that, in a bid to lessen the torture against him, including solitary confinement for periods of between 3 days and one and a half months, he was forced on at least 15 occasions to mount hunger strikes, lasting for periods of between 5 and 28 days.

2.16 On the day of his release, 24 July 1997, the complainant was escorted to the Bouchoucha detention centre, where he was questioned about his plans for the future as a militant and about his fellow detainees. According to the complainant, this questioning was followed by a session of mental harassment and threats. He says that he was released at 4 p.m. with instructions to report to the local police the moment he arrived in his home region of Gabès. There he was subjected to further questioning for a period of four hours. He was ordered to report twice a week to the regional police headquarters and daily at the local police station. According to the complainant, this administrative supervision was accompanied by police checks, including at night, of him and his family, the denial of his right to work and to study, refusal to issue a passport to his father and the confiscation of his brother's passport. He was also required to obtain permission from the local police for any movement away from his place of residence, a requirement which was accompanied by further questioning about his relatives and people with whom he had contacts. The complainant adds that he was detained for 48 hours in November 1998, during President Ben Ali's visit to Gabès governorate. He maintains that, whenever he had any contact with others living in the neighbourhood, both he and the people he met would be taken in for questioning.

2.17 Given this situation, the complainant explains that he then fled Tunisia for Switzerland, where he obtained refugee status.[c]

2.18 The complainant provides a list of people who subjected him to torture and ill-treatment.[d]

2.19 The complainant describes the consequences of the torture and ill-treatment that was inflicted on him, namely, an operation in 1988 to remove a fatty growth at the back of his head caused by violent blows administered under torture; scars of cigarette burns on his feet; kidney pains resulting from the detention conditions; and mental problems: he submits a medical certificate attesting to a neuropsychiatric disorder and showing that he has received medical treatment and psychotherapy at a Swiss psychiatric centre.

2.20 As to whether all domestic remedies have been exhausted, the complainant argues that, while such remedies might be provided for in Tunisian law, they are impossible in practice because of the bias of judges and the impunity granted to those responsible for violations. He adds that the regulations governing the activities of bodies which play a role in upholding human rights, such as the Higher Committee for Human Rights and Fundamental Freedoms and the Constitutional Council, prevent them from supporting complaints of torture. To back up his argument, he cites the reports of such non-governmental organizations as Amnesty International, the International Federation for Human Rights and Human Rights Watch.

Substance of the complaint

3.1 The complainant maintains that the Tunisian Government has breached the following articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Article 1. The practices described above, such as "falka", the "roast chicken" position, the "upside-down" position, the "chair", etc., to which the complainant was subjected, constitute acts of torture.

Article 2, paragraph 1. It is alleged that the State party not only failed to take effective measures to prevent torture, but even mobilized its administrative machinery and, in particular, its police force as an instrument of torture against the complainant.

Article 4. It is alleged that the State party has not ensured that all the acts of torture to which the complainant has been subjected are offences under its criminal law.

Article 5. It is alleged that the State party has instituted no legal proceedings against those responsible for torturing the complainant.

Article 11. It is alleged that the authorities have not used their supervisory powers to prevent torture; instead, specific instructions have been given that torture is to be applied.

Article 12. It is alleged that the State party has not carried out an investigation of the acts of torture committed against the complainant.

Article 13. It is alleged that the State party has not effectively upheld the complainant's right to lodge a complaint with the competent authorities.

Article 14. It is alleged that the State party has ignored the complainant's right to make a complaint and has thereby deprived him of his right to redress and rehabilitation.

Article 15. It is alleged that on 27 September 1987 the complainant was sentenced to a prison term on the basis of a confession obtained as a result of torture.

Article 16. The repressive measures and practices described above, such as solitary confinement, violation of the right to medical care and the right to send and receive mail, restriction of family visits, etc., applied by the State party against the complainant constitute cruel, inhuman and degrading treatment or punishment.

3.2 The complainant also claims that his freedom of movement and his right to work were infringed by the administrative supervision measures applied against him, as was his right to pursue his studies.

State party's observations on admissibility

4.1 On 4 December 2001, the State party challenged the admissibility of the complaint on the grounds that the complainant has neither employed nor exhausted available domestic remedies.

4.2 The State party points out that the complainant is a well known activist of the illegal extremist movement ENNAHDA, which foments religious and racial hatred and practises violence. The State party explains that the complainant was sentenced on 27 September 1987 by the State Security Court to 10 years' immediate imprisonment and hard labour for having carried out a terrorist attack against Ali Bouhlila, by throwing sulphuric acid over his face and abdomen on 21 March 1987. According to the State party, the complainant was also found guilty, at the same trial, of aiding and abetting other terrorist acts.

4.3 The State party maintains that the complainant may still have recourse to the available domestic remedies, since, under Tunisian law, the limitation period for acts alleged to be, and characterized as, serious offences is 10 years.

4.4 The State party explains that, under the criminal justice system, the complainant may submit a complaint, from within Tunisia or abroad, to a representative of the Public Prosecutor's Office with jurisdiction in the area in question. He may also authorize a Tunisian lawyer of his own choice to submit such a complaint or request a foreign lawyer to do so with the assistance of a Tunisian colleague.

4.5 Under the same rules of criminal procedure, the Public Prosecutor will receive the complaint and institute a judicial inquiry. In accordance with article 53 of the Code of Criminal Procedure, the examining magistrate to whom the case is referred will hear the author of the complaint. In the light of this hearing, he may decide to hear witnesses, question suspects, undertake on-site investigations and seize physical evidence. He may also order expert studies and carry out any actions which he deems necessary for the uncovering of evidence, both in favour of and against the complainant, with a view to discovering the truth and verifying facts on which the trial court will be able to base its decision.

4.6 The State party explains that the complainant may, in addition, lodge with the examining magistrate during the pre-trial proceedings an application for criminal indemnification for any harm suffered, over and above the criminal charges brought against those responsible for the offences against him.

4.7 If the examining magistrate deems that the public right of action is not exercisable, that the acts do not constitute a violation or that there is no prima facie case against the accused, he shall rule that there are no grounds for prosecution. If, on the other hand, the magistrate deems that the acts constitute an offence punishable by imprisonment, he shall send the accused before a competent court - which in the present instance, where a serious offence has been committed, would be the indictment chamber. All rulings by the examining magistrate are immediately communicated to all the parties to the proceedings, including the complainant who brought the criminal indemnification proceedings. Having been thus notified within a period of 48 hours, the complainant may, within 4 days, lodge an appeal against any ruling prejudicial to his interests. This appeal, submitted in writing or orally, is received by the clerk of the court. If there is prima facie evidence of the commission of an offence, the indictment chamber sends the accused before the competent court (criminal court or criminal division of a court of first instance), having given rulings on all the counts established during the proceedings. If it chooses, it may also order further information to be provided by one of its assessors or by the examining magistrate; it may also institute new proceedings, or conduct or order an inquiry into matters which have not yet been the subject of an examination. The decisions of the indictment chamber are subject to immediate enforcement.

4.8 A complainant seeking criminal indemnification may appeal on a point of law against a decision of the indictment chamber once it has been notified. This remedy is admissible when the indictment chamber rules that there are no grounds for prosecution; when it has ruled that the application for criminal indemnification is inadmissible, or that the prosecution is time-barred; when it has deemed the court to which the case has been referred to lack jurisdiction; or when it has omitted to make a ruling on one of the counts.

4.9 The State party stresses that, in conformity with article 7 of the Code of Criminal Procedure, the complainant may bring criminal indemnification proceedings before the court to which the case has been referred (criminal court or criminal division of the court of first instance) and, as appropriate, may lodge an appeal, either with the Court of Appeal if the offence in question is an ordinary offence, or with the criminal division of the Court of Appeal if it is a serious offence. The complainant may also appeal to the Court of Cassation.

4.10 Second, the State party maintains that the domestic remedies are effective.

4.11 According to the State party, the Tunisian courts have systematically and consistently acted to remedy deficiencies in the law, and stiff sentences have been handed down on those responsible for abuses and violations of the law. The State party says that, between 1 January 1988 and 31 March 1995, judgements were handed down in 302 cases involving members of the police or the national guard under a variety of counts, 227 of which fell into the category of abuse of authority. The penalties imposed varied from fines to terms of imprisonment of several years.[c]

4.12 The State party maintains that, given the complainant's political and partisan motives and his offensive and defamatory remarks, his complaint may be considered an abuse of the right to submit complaints.

4.13 The State party explains that the extremist movement of which the complainant is an active member has perpetrated a number of terrorist acts, including an attack in a hotel in Monastir, in August 1987, which caused a British tourist to lose both legs. Furthermore, this "movement" is not recognized under current Tunisian law.

4.14 The State party explains that the claims by the complainant demonstrate his political aims and confirm the biased and partisan nature of his allegations. Such is the case, according to the State party, when the complainant states that, in a State where the people do not have the right to express their views on the major issues of public life, legality is de facto diminished by the lack of any form of democratic oversight. The State party maintains, in addition, that the complaint contains offensive and defamatory remarks about the institutions of the Tunisian State, such as the complainant's statement that the entire administration is at the beck and call of the police apparatus, which turns the State into an effective instrument of torture.

Complainant's comments on the State party's observations

5.1 On 3 June 2002, the complainant challenged the State party's argument that he was supposedly unwilling to turn to the Tunisian justice system and make use of domestic remedies. He enumerates, by way of introduction, the efforts he made, to no avail, to approach the judicial and prison authorities with his complaints of ill-treatment, which made his situation worse, causing fear and reluctance to take action. He refers once again to the insurmountable obstacles placed in his way by the administrative supervision arrangements, which also embodied a definite threat of reprisals if he made a complaint.

5.2 The complainant believes that the recourse procedures are excessively protracted. He describes, in this context, how he drew the judge's attention to the torture inflicted on him, so that the judge would take the necessary steps to bring the culprits to justice - but to no avail.

He adds that, over the last 20 or 30 years, complaints about deaths resulting from torture have been ignored, while to this day the torturers continue to enjoy the protection of the State.

5.3 The complainant also maintains that the available remedies are not likely to succeed. He says that he complained to the judge of ill-treatment against him and requested a medical check, but to no avail. It therefore seemed unlikely to him that he would obtain satisfaction from the judicial authorities. The complainant explains that his case with the judge was not an isolated instance and, in that context, submits an extract from a report by the Tunisian Committee for Human Rights and Freedoms. The complainant maintains that the judicial system is not independent and gave him no protection during his trial and conviction. He also cites extracts from reports by the International Federation for Human Rights and the Tunisian Committee for Human Rights and Freedoms in support of his observation that complaints of torture do not succeed and that the authorities exert pressure to prevent the lodging of such complaints. He also maintains that the administrative supervision under which he was placed, which involved constant supervision by a number of different authorities accompanied by acts of intimidation, was not a circumstance conducive to the lodging of complaints.

5.4 The complainant also challenges the State party's argument that a Tunisian lawyer can be instructed from abroad to lodge a complaint.

5.5 The complainant cites serious encroachments by the authorities on the free and independent exercise of the legal profession. According to him, lawyers who dare to defend complaints of torture are subject to harassment and other abuses, including prison sentences. As an example, he cites the cases of the lawyers Néjib Hosni, Béchir Essid and Anouar Kosri, and quotes extracts from reports and statements by Amnesty International, the World Organization against Torture, the International Federation for Human Rights and the International Commission of Jurists. He adds, also on the basis of these reports by non-governmental organizations, that none of the complaints lodged by victims of torture over recent years, particularly following the promulgation in 1988 of article 13 bis of the Code of Criminal Procedure, providing for the possibility of medical visits, have been followed up. He also explains that, in certain cases, medical checks have been allowed after a long delay, once all traces of torture have disappeared, and that the checks are sometimes carried out by compliant doctors who will fail to find anything wrong with the detainees' physical condition, even if there are traces of torture. The complainant believes that, in these circumstances, it would not make much difference to appoint a lawyer. The complainant also stresses that the lodging of a complaint from abroad with the Tunisian authorities is likely to be covered by article 305, paragraph 3, of the Code of Criminal Procedure, which provides that "any Tunisian who commits any of the offences mentioned in article 52 bis of the Criminal Code abroad may also be prosecuted and brought to trial, even if the aforementioned offences are not punishable under the legislation of the State in which they were committed". The complainant believes that a complaint submitted by him from abroad could be construed as an insult against the regime, given that the State party has declared him to be a terrorist. Lastly, he explains that his situation as an asylum-seeker, then as a political refugee in Switzerland, precludes him from successfully concluding any proceedings that he might initiate, given the restrictions placed on contacts between refugees and the authorities in their own countries. He explains that severance of all relations with the country of origin is one of the conditions on which refugee status is granted, and that it plays an important role when consideration is being given to withdrawing asylum.

According to the complainant, such asylum would effectively end if the refugee should once again, of his own volition, seek the protection of his country of origin, for example by maintaining close contacts with the authorities or paying regular visits to the country.

5.6 The complainant also challenges the affirmation by the State party of the existence of available remedies.

5.7 He argues that the State party has confined itself to repeating the procedure described in the Code of Criminal Procedure, which is far from being applied in reality, particularly where political prisoners are concerned. In support of his argument, the complainant cites reports by Amnesty International, Human Rights Watch, the World Organization against Torture, the National Consultative Commission on Human Rights in France and the National Council for Fundamental Freedoms in Tunisia. The complainant also refers to the Committee against Torture's concluding observations on Tunisia, dated 19 November 1998. He stresses that the Committee against Torture recommended, among other things, that the State party should, first, ensure the right of victims of torture to lodge a complaint without the fear of being subjected to any kind of reprisal, harassment, harsh treatment or prosecution, even if the outcome of the investigation does not prove their allegations, and to seek and obtain redress if those allegations are proven correct; second, ensure that medical examinations are automatically provided following allegations of abuse and that autopsies are performed following any deaths in custody; and third, ensure that the findings of all investigations concerning cases of torture are made public and that such information includes details of any offences committed, the names of the offenders, the dates, places and circumstances of the incidents and the punishment received by those found guilty. The Committee also noted that many of the regulations existing in Tunisia for the protection of arrested persons were not adhered to in practice. It also expressed its concern over the wide gap that existed between law and practice with regard to the protection of human rights, and was particularly disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police, which, in certain cases, resulted in death in custody. The complainant also notes the lack of independence of the judicial system and the bodies set up to monitor application of the law. Lastly, he emphasizes that the State party's reply, in the current case, shows that no domestic investigation has been held into the rather detailed information contained in the complaint under consideration.

5.8 The complainant challenges the State party's argument that the domestic remedies are effective.

5.9 With regard to the 302 cases involving police or national guard officers against whom, according to the State party, sentences have been handed down, the complainant points out that there is no tangible proof that these cases, which have not been published or made public in any way, actually took place; that the 277 cases cited by the State party as examples of abuse of authority are not relevant to the case in question; and that the State party refers only to cases which do not tarnish the image of Tunisia and therefore include no case of inhuman or degrading treatment. He explains that the cases adduced by the State party took place during the period 1988-1995 and were covered by the concluding observations of the Committee against Torture mentioned above. Lastly, citing extracts from reports by the Tunisian Committee for Human Rights and Freedoms and Amnesty International in particular, he draws attention to the immunity enjoyed by officials involved in acts of torture, some of whom have even been promoted. The complainant adds that Tunisia has helped Tunisian officials evade arrest warrants issued against them abroad on the basis of complaints by victims of torture

5.10 Finally, the complainant rejects the comments by the State party characterizing his complaint as an abuse of rights. He says that, with its references in this context to political commitment and terrorism, the State party is demonstrating its bias and, by extension, the impossibility of obtaining any remedy in Tunisia. The complainant also stresses that the prohibition of torture and inhuman or degrading treatment is a provision which admits of no exception, including for terrorists. He believes that, in its response to this complaint, the State party is resorting to a political manoeuvre which has no legal relevance and which constitutes an abuse of rights.

Additional information from the State party on admissibility

6.1 On 8 November 2002 the State party again challenged the admissibility of the complaint. It maintains that the complainant's claims about recourse to the Tunisian justice system and the use of domestic remedies are baseless and unsupported by any evidence. It affirms that appeal procedures do not take an unreasonable time, and that proceedings in respect of the allegations made in the complaint are not time-barred, since the time limit for bringing proceedings in such cases is 10 years. Contrary to what the complainant alleges, the State party says that he can instruct a lawyer of his choice to lodge a complaint from abroad. It adds that the complainant's claims that a complaint lodged from abroad with the Tunisian authorities might be covered by article 305, paragraph 3, of the Code of Criminal Procedure, which permits the prosecution of those guilty of terrorist acts, are baseless. The State party maintains that domestic remedies before the Tunisian judicial authorities are not only possible in the current case but indeed effective, as shown by the fact that victims of violations in Tunisia have obtained satisfaction. Fourth, the State party argues that the complainant is abusing the right to lodge complaints by seeking to misrepresent and distort the points made in the State party's response of 4 December 2001.

Committee's decision on admissibility

7.1 At its twenty-ninth session, the Committee considered the admissibility of the complaint, and in a decision of 20 November 2002 declared it admissible.

7.2 With regard to the issue of the exhaustion of domestic remedies, the Committee noted that the State party challenged the admissibility of the complaint on the grounds that the available and effective domestic remedies had not been exhausted. In the present case, the Committee noted that the State party had provided a detailed description both of the remedies available, under law, to any complainant and of cases where such remedies had been applied against those responsible for abuses and for violations of the law. The Committee considered, nevertheless, that the State party had not sufficiently demonstrated the relevance of its arguments to the specific circumstances of the case of this complainant, who claims to have suffered violations of his rights. It made clear that it did not doubt the information provided by the State party about members of the security forces being prosecuted and convicted for a variety of abuses. But the Committee pointed out that it could not lose sight of the fact that the case at issue dates from 1987 and that, given a statute of limitations of 10 years, the question arose of whether, failing interruption or suspension of the statute of limitations - a matter on which the

State party had provided no information - action before the Tunisian courts would be disallowed. The Committee noted, moreover, that the complainant's allegations related to facts that had already been reported to the authorities. The Committee pointed out that to date it remained unaware of any investigations voluntarily undertaken by the State party. The Committee therefore considered it very unlikely in the present case that the complainant would obtain satisfaction by exhausting domestic remedies, and decided to proceed in accordance with article 22, paragraph 5 (b), of the Convention.

7.3 The Committee noted, in addition, the argument by the State party to the effect that the complainant's claim was tantamount to abuse of the right to lodge a complaint. The Committee considered that any report of torture was a serious matter and that only through consideration of the merits could it be determined whether or not the allegations were defamatory. Furthermore, the Committee believed that the complainant's political and partisan commitment adduced by the State party did not impede consideration of this complaint, in accordance with the provisions of article 22, paragraph 2, of the Convention.

7.4 Lastly, the Committee ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

State party's observations on the merits

8.1 In its observations of 3 April 2003 and 25 September 2003, the State party challenges the complainant's allegations and reiterates its position regarding admissibility.

8.2 In relation to the allegations concerning the State party's "complicity" and inertia vis-à-vis "practices of torture", the State party indicates that it has set up preventive[f] and dissuasive[g] machinery to combat torture so as to prevent any act which might violate the dignity and physical integrity of any individual.

8.3 Concerning the allegations relating to the "practice of torture" and the "impunity of the perpetrators of torture", the State party considers that the complainant has not presented any evidence to support his claims. It emphasizes that, contrary to the complainant's allegations, Tunisia has taken all necessary legal and practical steps, in judicial and administrative bodies, to prevent the practice of torture and prosecute any offenders, in accordance with articles 4, 5 and 13 of the Convention. Equally, according to the State party, the complainant has offered no grounds for his inertia and failure to act to take advantage of the effective legal opportunities available to him to bring his case before the judicial and administrative authorities (see paragraph 6.1). Concerning the Committee's decision on admissibility, the State party emphasizes that the complainant cites not only "incidents" dating back to 1987, but also "incidents" dating from 1994, 1996 and 1997, that is, the time when the Convention against Torture was fully incorporated into Tunisian domestic law and when he reports "ill-treatment" that he claims to have suffered while being held in "Borj Erroumi prison", El Kef prison and Tunis prison. Hence the statute of limitations has not expired, and the complainant should urgently act to interrupt the limitation period, either by contacting the judicial authorities directly, or by performing an act which has the effect of interrupting the limitation. The State party also mentions the scope for the complainant to lodge an appeal for compensation for any serious injury caused by a public official in the performance of his duties,[h] noting that the limitation period stands at 15 years.[i] The State party points out that the Tunisian courts have always acted systematically to remedy deficiencies in the law on acts of torture (see paragraph 4.11). According to the State party, the complainant has merely put forward false, contradictory, not to say defamatory remarks.

8.4 As for the allegations of failure to respect guarantees relating to judicial procedure, the State party regards them as unfounded. It refers to the complainant's inertia and failure to act. According to the State party, the authorities did not prevent him from lodging a complaint before the courts - on the contrary, he opted not to make use of domestic remedies. As for the "obligation" of judges to ignore statements made as a result of torture, the State party cites article 15 of the Convention against Torture, and considers that it is incumbent on the accused to provide the judge with at least basic evidence that his statement has been made in an unlawful manner. In this way he would confirm the truth of his allegations by presenting a medical report or a certificate proving that he had lodged a complaint with the public prosecutor's office, or even by displaying obvious traces of torture or ill-treatment to the court. However, the State party points out that the complainant did not deem it necessary to lodge a complaint either during his detention or during his trial; this formed part of a strategy adopted by the ENNAHDA illegal extremist movement in order to discredit Tunisian institutions by systematically alleging acts of torture and ill-treatment but not making use of available remedies.

8.5 Concerning the allegations relating to the trial, the State party maintains that the complainant is mistaken in claiming that he did not sign the record of his questioning by the examining magistrate. According to the State party, his counsel did indeed speak on the substance of the matter, at the invitation of the examining magistrate, in accordance with the applicable rules of criminal procedure. The State party points out that the complainant was found guilty of throwing acid at his victim, among other offences, and that he admitted the act before the examining magistrate and the court, where he expressed his regret, stating that his action had given rise to psychological problems due to a feeling of guilt and the ghastly nature of the act. As for the complainant's statement that he had taken steps to request a medical examination, without success, the State party points out that an examination is not ordered in response to a mere request, but requires the presence of indications which would justify such an examination. Accordingly the examining magistrate had rejected the complainant's request for a medical examination, since, according to the State party, the complainant displayed no obvious signs of violence.

8.6 Concerning the allegations relating to his confession, the State party considers baseless the complainant's claim that he was found guilty on the sole basis of his confession. It points out that, under the last paragraph of article 69 and article 152 of the Code of Criminal Procedure, a confession on the part of the accused cannot relieve the judge of the obligation to seek other evidence, while confessions, like all items of evidence, are a matter for the independent appreciation of the judge. On that basis, it is a constant of Tunisian case law that an accused cannot be found guilty on the sole basis of a confession.[j] Moreover, according to the State party, the complainant's allegation that he confessed under torture his membership of the ENNAHDA movement is contradicted by the certificate supplied by Mr. Ltaief to the Swiss authorities in support of his application for political asylum, since the certificate, from the "leader of the ENNAHDA movement", confirmed his membership of the "movement".

8.7 Concerning the allegations relating to prison conditions, and in particular the arrangements for transfers between one prison and another, which the complainant considers an abuse, the State party points out that, in keeping with the applicable regulations, transfers are decided upon in the light of the different stages of the proceedings, the number of cases and the courts which have competence for specific areas. The prisons are grouped in three categories: for persons held awaiting trial; for persons serving custodial sentences; and semi-open prisons for persons found guilty of ordinary offences, which are authorized to organize agricultural labour. According to the State party, as the complainant had changed his status from that of remand prisoner to that of a prisoner serving a custodial sentence, and bearing in mind the requirements as to investigations in his case or in other similar cases, he was transferred from one prison to another, in accordance with the applicable regulations. The conditions in which the complainant was held, wherever he was held, were in keeping with the prison regulations governing conditions for holding prisoners in order to ensure prisoners' physical and moral safety. The State party points out that prisoners' rights are scrupulously protected in Tunisia, without any discrimination, whatever the status of the prisoner, in a context of respect for human dignity, in accordance with international standards and Tunisian legislation. Medical, psychological and social supervision is provided, and family visits are allowed. The State party maintains that the conditions in which the complainant was held were in keeping with Tunisian regulations governing prison establishments, which conform to relevant international standards.

8.8 Contrary to the allegations that the medical consequences suffered by the complainant are due to torture, the State party rejects any causal link. It notes in particular that the medical certificate recording a neuropsychiatric disorder, which was produced by the complainant, dates from 29 July 1999, that is, some 10 years after the "incidents". The State party also cites the psychological problems to which the complainant referred in court (para. 8.5). In addition, according to the State party, the complainant, contrary to his allegations, enjoyed proper medical supervision and appropriate care during his stay at the prison of Borj Erroumi.

8.9 Concerning the allegations that he was denied visits, according to the State party the complainant regularly received visits from his brothers, his uncle, his father and his mother, in accordance with the prison regulations, as demonstrated by the visitors' records in the prisons in which he was held.

8.10 Concerning the allegations relating to article 11 of the Convention, the State party rejects them and refers to systematic monitoring[k] of compliance with rules, instructions, methods and practices of interrogation and provisions relating to the holding[l] and treatment of persons who have been arrested, detained or imprisoned.[m]

8.11 Concerning the allegations relating to the social position of Mr. Ltaief's family, the State party maintains that his family is not suffering any form of harassment or restrictions, that the family is living in decent circumstances, and that the complainant's father is receiving a pension.

Observations by the complainant

9.1 In his observations dated 20 May 2003, the complainant sought to respond to each of the points contained in the above observations by the State party.

9.2 Concerning the preventive arrangements for combating torture, the complainant considers that the State party has confined itself to listing an arsenal of laws and measures of an administrative and political nature which, he says, are not put into effect in any way. To support this assertion he cites a report prepared by the non-governmental organization "National Council for Fundamental Freedoms in Tunisia" (CNLT).[n]

9.3 In relation to the establishment of a legislative reference system to combat torture, the complainant considers that article 101 bis of the Code of Criminal Procedure was adopted belatedly in 1999, in particular in response to the concern expressed by the Committee against Torture at the fact that the wording of article 101 of the Criminal Code could be used to justify serious abuses involving violence during questioning. He also claims that this new article is not applied, and attaches a list of the victims of repression in Tunisia between 1991 and 1998 prepared by the non-governmental organization "Vérité-Action". He also points out that the cases cited by the State party to demonstrate its willingness to act to combat torture relate only to accusations of abuse of authority and violence and assault, as well as offences under the ordinary law, and not to cases of torture leading to death or cases involving physical and moral harm inflicted on the victims of torture.

9.4 Concerning the practice of torture and impunity, the complainant maintains that torturers do enjoy impunity, and that in particular no serious investigation has been carried out into those suspected of committing crimes of torture. He considers that, in his own case, the State party's observations display a selective approach to the facts, by concluding that the allegations of ill-treatment date back to 1987, whereas the complainant recounts his "martyrdom" in prison from 1987 to 1997. The complainant also points out that, whereas a State governed by the rule of law should automatically follow up any report of a criminal act which may be regarded as a serious offence, the Tunisian authorities are content to accuse the alleged victims of terrorism and manipulation. The complainant also produces a list of complaints by Tunisian public figures which were recently reported and ignored by the authorities. He considers that he has drawn up a detailed account of his individual case, giving names, places, dates and treatment inflicted, but the State party contents itself with a blanket denial of such treatment. The complainant did not mention torturers because of their membership of the security forces, but because of specific and repeated attacks on his physical and moral integrity and his private and family life. The initiation of an investigation designed to check whether a person belonging to the security forces has committed acts of torture or other acts does not constitute a violation of the presumption of innocence but a legal step which is vital in order to investigate a case and, if appropriate, place it before the judicial authorities for decision. In relation to appeals before the courts, the complainant considers that the State party has confined itself to repeating the description of legal options open to victims set out in its previous submissions without responding to the last two sentences of paragraph 7.2 of the decision on admissibility. He reiterates that the theoretical legal options described by the State party are inoperative.

9.5 Concerning the claim of inertia and lack of action, the complainant considers that the State party is inconsistent in holding that acts of torture are regarded as serious offences in Tunisian law and accordingly prosecuted automatically, while awaiting a complaint by the victim before taking action. He also re-emphasizes his serious efforts to demand a medical examination and an investigation into the torture he had suffered, referring to the examining magistrate's refusal of his request for a medical examination, and the medical certificate indicating a neuropsychiatric disorder.

9.6 The complainant maintains that his counsel refused to sign the transcript of the questioning before the examining magistrate, thereby proving the abnormal conditions in which the proceedings took place. He also notes that by its own admission, but by means of legal reasoning which he finds strange, the State party acknowledges that the examining magistrate refused his request for a medical examination because of the absence of any obvious traces of violence. The complainant explains that holding an individual in pre-trial detention beyond the time limits laid down by law for the purposes of concealing the traces of torture, and then denying him the right to a medical examination on the grounds that there were no obvious traces of torture, falls within a pattern of institutionalization of torture. Lastly, according to the complainant, the State party thereby acknowledges that it prevented him from initiating an elementary and obvious procedure which would provide him with the initial evidence he requires. He adds that in his extremely serious case, in which he was brought before a court of special jurisdiction (the State Security Court), this refusal deprived him of the last resort which would have enabled him to defend his interests. According to the complainant, given the serious charges made against him, the slightest doubt and the slightest allegation of ill-treatment should have triggered a process of checking. Furthermore, the examining magistrate's refusal to authorize a medical examination lessened the complainant's chances of resubmitting the request to the court (even though the request was indeed resubmitted).

9.7 Concerning the allegations relating to his confession, the complainant maintains that his confession was extracted under torture, and, citing the reports of CNLT, states that such methods are used in political trials and sometimes in trials involving offences under ordinary law. As for the State party's endeavours to detect signs of contradiction in his acknowledgement of membership of the ENNAHDA movement (para. 8.6), the complainant is surprised at this strange reasoning, and explains that his conviction related to an alleged attack using acid, and not membership of the ENNAHDA movement.

9.8 Concerning the conditions in which he was held, the complainant considers that the State party is taking refuge behind legal texts in order to dismiss his plentiful, specific and substantiated evidence. He explains that he was transferred for purposes of punishment, and not for any matter related to cases pending before the courts. He points out that the question of transferring him for the purposes of the investigation never arose, and calls on the State party to prove the contrary.

9.9 In relation to visits, the complainant considers that denial of visits constituted a form of revenge against him each time he sought to exercise a right and took action to that end, for example in the form of a hunger strike. He explains that the actual conditions in which the visits took place - the ill-treatment inflicted on the members of his family at the place of the visit and by the local police on their return home - constituted breaches of national and international standards.

9.10 Concerning the allegations relating to the provision of care, the complainant draws the Committee's attention to the medical certificate contained in his file, pointing out that it was supplied only 10 years after the incidents as that was the first available opportunity. He also notes that the State party, while it accepts the existence of psychological problems, but only on the grounds of an alleged feeling of guilt and not because of the torture he suffered, refuses to produce the file which would confirm the extent of the regrets of which the court was informed. Concerning the treatment cited by the State party, the complainant demands the production of his medical file by the State party.

9.11 In relation to administrative supervision, the complainant considers that any punishment, including those provided for in the Tunisian Criminal Code, may be characterized as inhuman and degrading if the goal pursued does not include the reconciliation of the offender with his social environment. He notes in particular that he was arbitrarily prevented from continuing his studies, during his 10 years in prison but above all afterwards. He deplores the fact that aside from a remark on the resumption of studies, the State party contented itself with a blanket denial of his assertions, without any supporting investigation or evidence. According to the complainant, administrative supervision serves only to bolster the police's stranglehold over the freedom of movement of former prisoners.

9.12 Concerning the situation of his family, the complainant records the suffering caused by the police surveillance and various forms of intimidation, ill-treatment during visits and the denial of passports for a period of years, continuing up to the present.

9.13 Concerning the application of article 11 of the Convention, the complainant considers that the State party once again contents itself with a theoretical description of its legal arsenal and a reference to the activities of the Higher Committee on Human Rights and Fundamental Freedoms, a non-independent institution. Citing documents issued by non-governmental organizations,[o] the complainant notes violations relating to the supervision of detention and police custody, such as manipulation of the dates when arrests were recorded, and incommunicado detention. He notes that the State party has not responded to his precise allegations relating to his detention for over two months.

9.14 In relation to the ENNAHDA movement, the complainant maintains that the organization is well known for its democratic ideals and its opposition to dictatorship and impunity, contrary to the State party's explanations. In addition, he challenges the accusations of terrorism levelled by the State party, which in fact form part of a complete fabrication.

9.15 Lastly, according to the complainant, the State party is endeavouring to place the burden of proof on the victim, accusing him of inertia and failure to act, seeking protection behind a panoply of legal measures which theoretically enable victims to lodge complaints and evading its duty to ensure that those responsible for crimes, including that of torture, are automatically prosecuted. According to the complainant, the State party is thus knowingly ignoring the fact that international law and practice in relation to torture place greater emphasis on the role of States and their duties in order to enable proceedings to be completed. The complainant notes that the State party places the burden of proof on the victim alone, even though the supporting evidence, such as legal files, registers of police custody and visits, and so on, is in the sole hands of the State party and unavailable to the complainant. Referring to European case law,[p] the complainant points out that the European Court and Commission call on States parties, in the case of allegations of torture or ill-treatment, to conduct an effective investigation into the allegations of ill-treatment and not to content themselves with citing the theoretical arsenal of options available to the victim to lodge a complaint.

Consideration of the merits

10.1 The Committee examined the complaint, taking due account of all the information provided to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

10.2 The Committee took note of the State party's observations of 3 April 2003 challenging the admissibility of the complaint. It notes that the points raised by the State party are not such as to prompt reconsideration of the Committee's decision on admissibility, notably owing to the lack of new or additional information from the State party on the matter of investigations voluntarily carried out by the State party (see paragraph 7.2). The Committee therefore does not consider that it should review its decision on admissibility.

10.3 The Committee therefore proceeds to examine the merits of the complaint, and notes that the complainant alleges violations by the State party of article 1, article 2, paragraph 1, article 4, article 5, article 11, article 12, article 13, article 14, article 15 and article 16 of the Convention.

10.4 The Committee notes that article 12 of the Convention places an obligation on the authorities to proceed automatically to a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or ill-treatment has been committed, no special importance being attached to the grounds for the suspicion.[q]

10.5 The Committee notes that the complainant maintains that in 1987 he complained to the examining magistrate of acts of torture inflicted on him and requested a medical examination in that regard, to no avail. The Committee also notes that the State party acknowledges that the examining magistrate rejected the complainant's request for a medical examination on the grounds that he displayed no obvious traces of violence. The Committee considers that the State party's reply referring to the lack of obvious traces of violence does not necessarily constitute a response to the complaint of acts of torture, which under the definition of torture set out in article 1 of the Convention give rise to "severe pain or suffering, whether physical or mental" and may leave non-obvious but real traces of violence. In that regard, the Committee notes the certificate produced by the complainant reporting a neuropsychiatric disorder. Lastly, the Committee takes note of the detailed and substantiated information provided by the complainant regarding the hunger strikes he carried out while in prison from 1987 to 1997, on at least 15 occasions, for periods of between 5 and 28 days, in protest at the treatment he had suffered. The Committee notes that the State party did not comment on this information. The Committee considers that these elements, taken together, should have been enough to trigger an investigation, which was not held, in breach of the obligation to proceed to a prompt and impartial investigation under article 12 of the Convention.

10.6 The Committee also observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence, and that it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this article of the Convention.[r]

10.7 The Committee notes, as already indicated, that the complainant explains that he did complain to the examining magistrate of the treatment inflicted on him, and resorted to hunger strikes in protest at the conditions imposed on him. Yet notwithstanding the jurisprudence under article 13 of the Convention, the Committee notes the State party's position maintaining that the complainant should have made formal use of domestic remedies in order to lodge his complaint, for example by presenting to the court a certificate proving that a complaint had been lodged with the office of the public prosecutor, or displaying obvious traces of torture or ill-treatment, or submitting a medical report. On this latter point, to which the Committee wishes to draw its attention, it is clear that the complainant maintains that his request for a medical check was denied, and that the State party justifies this decision by citing the lack of obvious traces of violence. The Committee points out that this reply on the part of the State party does not necessarily answer the complainant's precise allegation of acts of torture which left actual traces, particularly of a neuropsychiatric nature. Finally, the Committee refers to its consideration of the report submitted by Tunisia in 1997, at which time it recommended that the State party should arrange for medical examinations to be organized systematically when allegations of abuse were made.

10.8 In the light of its practice relating to article 13 and the observations set out above, the Committee considers that the breaches enumerated are incompatible with the obligation stipulated in article 13 to proceed to a prompt investigation.

10.9 Finally, the Committee considers that there are insufficient elements to make a finding on the alleged violation of other provisions of the Convention raised by the complainant at the time of adoption of this decision.

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 12 and 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

12. Pursuant to rule 112, paragraph 5 of its rules of procedure, the Committee urges the State party to conduct an investigation into the complainant's allegations of torture and ill-treatment, and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.

Notes

[a] The complaint does not specify the accusations brought against the complainant.

[b] The complaint does not specify the reasons given for the finding against the complainant.

[c] He entered Swiss territory on 18 March 1999. There is no indication of the date when he obtained refugee status.

[d] Information available in the file available.

[e] The examples cited by the State party are available in the file.

[f] This includes instruction in human rights values in training schools for the security forces, the Higher Institute of the Judiciary and the National School for training and retraining of staff and supervisors in prisons and correctional institutions; a human rights-related code of conduct aimed at senior law enforcement officials; and the transfer of responsibility for prisons and correctional institutions from the Ministry of the Interior to the Ministry of Justice and Human Rights.

[g] A legislative reference system has been set up: contrary to the complainant's allegation that the Tunisian authorities have not criminalized acts of torture, the State party indicates that it has ratified the Convention against Torture without reservations, and that the Convention forms an integral part of Tunisian domestic law and may be invoked before the courts. The provisions of criminal law relating to torture are severe and precise (Criminal Code, article 101 bis).

[h] Under the Administrative Court Act of 1 June 1972, the State may be held responsible even when it is performing a sovereign act if its representatives, agents or officials have caused material or moral injury to a third person. The injured party may demand from the State compensation for the injury suffered, under article 84 of the Code of Obligations and Contracts, without prejudice to the direct liability of its officials vis-à-vis the injured parties.

[i] Administrative Court, judgement No. 1013 of 10 May 1993 and judgement No. 21816 of 24 January 1997.

[j] Judgement No. 4692 of 30 July 1996, published in the *Revue de Jurisprudence et Législation* (R.J.L.); judgement No. 8616 of 25 February 1974, R.J.L. 1975; and judgement No. 7943 of 3 September 1973, R.J.L. 1974.

[k] In addition to legislation, protective institutional machinery has been set up by stages, including surprise visits to prisons by the Chairman of the Higher Committee for Human Rights and Fundamental Freedoms, and the creation on 31 July 2000 of a post of "judge for the enforcement of sentences" who is responsible for closely monitoring the enforcement of custodial sentences and conducting periodic visits to prisons.

[l] Act No. 99-90 of 2 August 1999 amended and supplemented a number of provisions of the Code of Criminal Procedure, and in particular reduced the length of police custody to three days, renewable once only for a further three days. Under the Act, criminal investigation officers may not hold a suspect for more than three days; they must notify the public prosecutor, who may, by written decision, extend the length of police custody once only for a further three days. The criminal investigation officer must inform the suspect of the measure being taken against him and its duration, and his rights under the law, notably the possibility of undergoing a medical examination during his period in custody. The officer must also inform one of the suspect's parents or children, brothers or sisters or spouse, as selected by him, of the measure being taken against him. These safeguards were further strengthened under the constitutional reform of 26 May 2002, which granted constitutional status to supervision of police custody by the judiciary, stipulating that this custodial measure could be imposed only by order of a court.

[m] The Act of 24 April 2001 on conditions for the imprisonment and treatment of detainees strengthened safeguards for the protection of prisoners and provided for prisoners to be prepared for a working life by offering them opportunities for paid employment.

[n] "Pour la réhabilitation de l'indépendance de la justice", April 2000-December 2001.

[o] Alternative report by FIDH to Tunisia's second periodic report to the Committee against Torture; communiqué issued on 20 February 2003 by the International Association for Supp
for Political Prisoners in Tunisia.

[p] Guide to Jurisprudence on Torture and Ill-Treatment - Article 3 of the European Conventi
for the Protection of Human Rights, Debra Long (APT); *Ribitsch v. Austria; Assenov v. Bulgaria.*

[q] Communication No. 59/1996 (*Encarnación Blanco Abad v. Spain*).

[r] Communications No. 6/1990 (*Henri Unai Parot v. Spain*) and No. 59/1996 (*Encarnación Blanco Abad v. Spain*).

Communication No. 196/2002

Submitted by:	M.A.M. (represented by counsel, Mr. Ingemar Sahlström)
Alleged victim:	M.A.M.
State party:	Sweden
Date of complaint:	3 January 2002

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 May 2004,

Having concluded its consideration of complaint No. 196/2002, submitted to the Committee against Torture by Mr. M.A.M. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is M.A.M., a Bangladeshi citizen, born on 1 January 1968, currently residing in Sweden, where he has sought asylum. He claims that his removal to Bangladesh[a] if his refugee claim is rejected would constitute a violation of article 3 of the Convention by Sweden.[b] He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 7 January 2002. Pursuant to rule 108, paragraph 9 of the Committee's rules of procedure Rev.3, the State party was requested not to expel the complainant to Bangladesh pending the consideration of his case by the Committee. On 12 February 2002, the State party informed the Committee that it had decided to stay the enforcement of the decision to expel the petitioner to Bangladesh.

The facts as submitted by the complainant

2.1 The complainant belongs to a minority in Bangladesh and lobbied for their rights through a political organization, the Shanti Bahini. During a meeting of the Shanti Bahini in November 1989, in which the claimant participated, the army attacked, and several of the participants were injured or killed. On 7 May 1990, the police arrested the claimant and detained him for six days. During police interrogations, he was allegedly tortured by use of electricity, burned with cigarettes, stuck with needles and kicked and beaten unconscious. On 19 November 1990 he fled the country for Sweden where he applied for asylum. On 4 October 1991, the Migration Board rejected the complainant's application. He appealed the decision to the Aliens Appeals Board, which, on 8 April 1993, rejected his application and ordered him deported to Bangladesh. After that, the complainant went into hiding, and it was not until 5 August 1995 that the decision to expel him could be enforced.

2.2 Upon his return to Bangladesh, the complainant was arrested and accused of political activity in Sweden. During four days of detention, he was allegedly beaten unconscious and a policeman poured warm water through his nose. The complainant also alleges having been subjected to ill-treatment of his genitals, being forced to drink urine, and that police threatened to kill him with a knife.

2.3 The complainant became a member of the Bangladesh National Party's (hereinafter referred to as the BNP) Youth Wing in 1996. He distributed pamphlets, organized demonstrations and in other ways protested against the politics of the Awami League government. He was also a board member in the BNP Mirpur department.

2.4 The complainant submits that because of his political activities for the BNP, he was falsely accused of different crimes, and that this is common treatment of political opponents to the Government. On 10 November 1998, there was a clash between the Awami League supporters and the police against the BNP supporters. The complainant was arrested and detained for five days for using violence against the police and for preventing policemen from carrying out their duties. During the interrogations, the police allegedly tied the complainant to a chair, kicked and beat him with rifles and sticks. He claims to have lost consciousness several times during these interrogations. He was released against bail after a hearing by a local court. On 18 August 1999, the complainant was convicted and sentenced to 20 months' imprisonment and a fine of 50,000 Thaka. The complainant subsequently escaped to Sweden, where he applied for asylum to the National Immigration Board (now Migration Board and hereinafter referred to as such) on 4 November 1999.[c]

2.5 On 18 October 2000, the Migration Board rejected the complainant's application for asylum. The complainant appealed to the Aliens Appeals Board, which, on 18 May 2001, rejected his refugee claim, and decided to deport him to Bangladesh. The Aliens Appeals Board based its decision on the finding that the complainant's political participation and alleged political persecution did not provide sufficient grounds for asylum since there is freedom of political expression in Bangladesh and the BNP is a legal political party. Although the Board did not question that the complainant was subjected to torture in 1990, 1995 and 1998, he resided in Sweden at the time of the alleged torture in 1992 and could therefore not have been subjected to torture at that time. This made the Board doubt the complainant's credibility. Moreover, although the Board members were aware of the incidents of police violence against persons in detention in Bangladesh, it did not consider that the complainant in particular risks being subjected to violence as part of a political persecution, and that the general treatment of prisoners as such did not justify asylum.

2.6 Counsel submitted new information with two new applications to the Board, which were rejected on 20 September and 29 October 2001, respectively. He submitted that the complainant would be arrested immediately upon return to Bangladesh, since he, according to a fax from his Bangladeshi lawyer, is under investigation for murder, and has been convicted and sentenced to life imprisonment for treason and anti-State activities on 3 September 2001.

2.7 According to the Swedish local psychiatric service, the complainant displays suicidal tendencies. The medical certificate from the Centrum for Victims of Torture (hereinafter referred to as CTD) states that he suffers from Post-Traumatic Stress Syndrome, and that they found several scars which support the complainant's account of the torture he claims to have been subjected to.

The complaint

3. The complainant claims that if returned to Bangladesh, there are substantial grounds to believe that he would be subjected to torture. He contends that his deportation to Bangladesh would be in violation of article 3 of the Convention. In substantiation of this fear, he invokes the instances of previous detention and torture on account of his political activity in Bangladesh. He further indicates that there exists a consistent pattern of human rights violations by Bangladeshi authorities, in particular against political opponents and persons in detention.

The State party's submission

4.1 On 13 May 2002, the State party submitted its observations on the admissibility and merits of the case.

4.2 On the issue of admissibility, the State party notes that all domestic remedies appear to have been exhausted, but that the complainant may lodge a new request for a residence permit with the Aliens Appeals Board at any time. Such a request must be considered by the Board, provided that new circumstances are adduced that would warrant a different decision.

4.3 The State party denies that the complainant's return to Bangladesh would entail a violation of article 3 of the Convention. While the general human rights situation in Bangladesh is not ideal and there are repeated reports of police torture, the Bangladesh Constitution prohibits torture and cruel, inhuman and degrading treatment, and the judiciary displays a significant degree of independence, having for example criticized the police for abuse of detention laws and powers.

4.4 Concerning the complainant's personal risk of being subjected to torture in Bangladesh, the State party draws attention to the fact that several provisions in the Alien's Act reflect the principle laid down in article 3, paragraph 1, of the Convention, and that the Swedish Immigration authorities apply the same kind of test when considering an application for asylum as the Committee does under the Convention. That such a test was applied in the present case is illustrated by the fact that the domestic authorities refer to chapter 3, section 3 of the Aliens Act and to article 3 of the Convention.

4.5 The State party notes that it is primarily for the complainant to collect and present evidence in support of his or her account.[d] His credibility is of vital importance to the assessment of an asylum application. The Swedish Immigration authorities held a two-hour interview before they made a decision in the present case. Thus the Board had ample time to make important additional observations, which, taken together with the facts and the documentation in the case, ensured that it had a solid basis for making its assessment of the complainant's need for protection in Sweden.

4.6 The State party recalls that although medical certificates establish that the complainant was subjected to torture, the aim of the Committee's examination of the complaint is to ascertain whether the complainant is at risk of torture upon his return.[e]

4.7 The State party understands the complaint to be founded in particular on the allegation that he risks being tortured upon return as a consequence of the alleged murder charge and the alleged judgement of 3 September 2001. It notes that the only piece of evidence submitted in this regard is a fax allegedly received from his lawyer in Bangladesh. Following a request from the State party, its Embassy in Dhaka commissioned a lawyer to investigate the matter. The lawyer, who examined the registers of all the five Metropolitan and District Sessions Courts of Dhaka, could not find any judgement passed against the complainant during the year 2001 in relation to murder, treason or anti-State activities charges. This was also confirmed by the Embassy of the United States in Bangladesh.

4.8 The Embassy also tried to contact the complainant's lawyer, but was told by an individual claiming to be his brother that he was temporarily out of town. Finally, the Embassy was informed by the house owner that no one with the complainant's name had lived at the address referred to in the telefax from the complainant's lawyer. The State party therefore questions the complainant's account about the murder charge and the judgement on treason and anti-State activities. It adds that should such judgement exist, the complainant could appeal against it in a whatsoever higher court. Moreover, the complainant has not submitted any documentation regarding the judgement or the arrest warrant, or the appeal against the judgement, which he claims was filed by his lawyer.

4.9 The State party points out that the events that allegedly prompted the complainant's departure from Bangladesh appear to have been directly linked to his active support of the BNP. It is therefore of vital importance to the assessment of the present case to acknowledge that the BNP has been the ruling party in Bangladesh since 1 October 2001. The State party considers that the shift in political authority implies that there no longer exists a basis for the complainant's claim that he would risk torture upon his return to Bangladesh and the burden to substantiate his claims now is all the heavier on the complainant.

4.10 The State party adds that the grounds for which the complainant previously was tortured no longer exist, since he first was tortured in 1990 for belonging to an organization to which he does not seem to belong to anymore, and for the other instances for participating in the work of the BNP, which is now the ruling party in Bangladesh.

4.11 The State party points to several inconsistencies and shortcomings in the complainant's account that it considers to be of relevance to the assessment of his credibility. Firstly, during the asylum interview and despite the fact that the complainant was asked to state the reasons for his application, he did not mention that he had been abused by the Bangladesh police until the interviewer brought up the subject of torture and then only on vague and general terms. In particular, although asked by the interviewer whether he had been arrested on other occasions than on 10 November 1998, he did not mention that he had been arrested and tortured in connection with the expulsion from Sweden to Bangladesh in 1995.

4.12 Secondly, while the complainant initially mentioned three instances on which he had been subjected to torture, he mentioned a fourth occasion which should have occurred in 1992, in connection with a medical examination. On this fourth occasion, however, the complainant actually was residing in Sweden.

4.13 Thirdly, the complainant provided diverging information about his life in Bangladesh after his return from Sweden in 1995. While according to the record from the medical centre in Rågsved of 11 January 2000, the complainant states that he was imprisoned for six months upon return to Bangladesh in 1995 and otherwise living on the run, the record from the psychiatric clinic shows that he had been working as an assistant in a shop for four years, between 1995 and 1999. The allegation of a six months' imprisonment otherwise does not appear anywhere else in the information submitted by the complainant to the Swedish authorities.

4.14 The State party concludes that the complainant has not substantiated his claim that there are substantial grounds for believing that he would be in danger of being tortured if returned to Bangladesh, and that an enforcement of the expulsion order would therefore not constitute a violation of article 3 of the Convention.

The complainant and the State party's further comments

5.1 On 23 April 2004, counsel submitted comments to the State party's submission. He reiterates the complainant's previous arguments, and adds that the complainant claims that he is still active in the Shanti Bahini, and that he is therefore wanted by the Bangladeshi police and authorities.

5.2 By note verbale of 29 April 2004, the State party disputes that the complainant can invoke his membership with the Shanti Bahini organization as a new circumstance. First, this new circumstance should be disregarded because the complainant has not referred to it previously in his complaint to the Committee, although he must have had the possibility to do so. Second, the late submission of the new circumstance gives reason to question the veracity of the complainant's statement in this regard. Third, the complainant has submitted no evidence to support his claim, and fourth, the State party has information about a peace accord between the Shanti Bahini and the Bangladeshi Government signed on 2 December 1997, and that the Shanti Bahini was formally abolished in 1999. Thus, the complainant has not substantiated his claim that the alleged membership in Shanti Bahini would imply that he would be exposed to a risk of torture if expelled to Bangladesh.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that the State party does not contest the exhaustion of domestic remedies, although it submits that, in the circumstances, a complainant may lodge a new request for a residence permit with the Aliens Appeals Board at any time and that such a request must be considered by the Board provided that new circumstances are adduced that could call for a different decision. The Committee considers that the complainant, by bringing his claim before the highest appellate body in Sweden under domestic legislation, has exhausted available and effective domestic remedies. As the Committee sees no further obstacles to admissibility, it declares the complaint admissible and proceeds to a consideration of the merits.

Consideration of the merits

6.2 The Committee must decide whether the forced return of the complainant to Bangladesh would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. It follows that, in conformity with the Committee's jurisprudence and despite the allegations of the complainant in regard to the situation in Bangladesh as per paragraph 3, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.3 The Committee takes note of the information received from the complainant about the general human rights situation in Bangladesh, in particular recurrent incidents of police violence against prisoners and political opponents. The Committee notes that the State party, while agreeing that there are repeated reports of police torture, nevertheless considers that the judiciary displays a significant degree of independence.

6.4 The Committee observes that the main reason the complainant fears a personal risk of torture if returned to Bangladesh is that he was previously subjected to torture for his membership in Shanty Bahini and in the opposition party BNP, and that he risks being imprisoned upon his return to Bangladesh pursuant to his alleged sentence to life imprisonment.

6.5 The Committee also notes that the grounds for which the complainant was previously tortured no longer exist, since he was first tortured in 1990 for belonging to an organization (the Shanti Bahini) but he has not submitted evidence to substantiate that he still belongs to that organization, and later on for participating in the activities of the BNP, which was then in opposition and is now the ruling party in Bangladesh. This fact has added importance in the case since the events that allegedly prompted his departure from Bangladesh were directly related to his activities in support of that party. Furthermore, although reports of human rights violations in Bangladesh still refer to a widespread practice of ill-treatment of prisoners by the police, the complainant has not submitted information or arguments to substantiate that he personally risks such treatment if he were to be imprisoned upon return to Bangladesh. Moreover, the Committee is not convinced that the complainant risks imprisonment upon his return, since he has failed to substantiate his claim regarding the alleged judgement of 3 September 2001, or in relation to the allegation that he is investigated for murder.

6.6 In light of the foregoing, the Committee finds that the complainant has not established that he himself would face a foreseeable, real and personal risk of being tortured within the meaning of article 3 of the Convention.

6.7 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Bangladesh by the State party would not constitute a breach of article 3 of the Convention.

Notes

[a] The Convention entered into force for Bangladesh on 4 November 1998, but the State party has not ratified article 22 of the Convention.

[b] The Convention entered into force for Sweden on 26 June 1987, and the State party has ratified the Committee's competence under article 22 of the Convention.

[c] Counsel states on page 2, paragraph 2, of the initial submission that the complainant applied for asylum on 4 November 1999, but then in paragraph 4 that he applied for asylum on 20 November 1990.

[d] The State party refers to the cases of *S.L. v. Sweden*, case No. 150/1999, Views adopted 11 May 2001, para. 6.4; and *M.R.P. v. Switzerland*, case No. 122/1998, Views adopted 24 November 2000, para. 6.5.

[e] The State party refers to the cases of *X., Y. and Z. v. Sweden*, case No. 61/1996, Views adopted 6 May 1998, para. 11.2.

[f] The State party refers to the case of *A.D. v. The Netherlands*, case No. 96/1997, decision adopted 12 November 1999, para. 7.4.

Communication No. 199/2002

Submitted by:	Ms. Hanan Ahmed Fouad Abd El Khalek Attia (represented by Mr. Bo Johansson of the Swedish Refugee Advice Centre)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	28 December 2001

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 17 November 2003,

Having concluded its consideration of complaint No. 199/2002, submitted to the Committee against Torture by Ms. Hanan Ahmed Fouad Abd El Khalek Attia under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Ms. Hanan Ahmed Fouad Abd El Khalek Attia, an Egyptian national born on 13 July 1964, currently present in Sweden. She claims that for Sweden to remove her to Egypt would violate article 3 of the Convention. She is represented by counsel.

1.2 On 14 January 2002, pursuant to rule 108 (9), of the Committee's rules of procedure, the State party was requested not to expel the complainant to Egypt while her complaint was before the Committee. It was stated that this request could be reviewed in the light of detailed information provided by the State party on the whereabouts of the complainant's husband and his conditions of detention. On 18 January 2002, further to the Committee's request, the Swedish Migration Board decided to stay enforcement of the expulsion decision until further notice, and, as a result, she remains lawfully in Sweden at the present time.

The facts as presented

2.1 In 1982, the complainant's husband, Mr. A., was arrested on account of his family connection to his cousin, who had been arrested for suspected involvement in the assassination of the former Egyptian President, Anwar Sadat. Before his release in March 1983, Mr. A. was allegedly subjected to "torture and other forms of physical abuse". Mr. A., active in the Islamic movement, completed his studies in 1986 and married the complainant. He avoided various police searches, but suffered difficulties, such as the arrest of his attorney, upon bringing a civil claim in 1991 against the Ministry of Home Affairs, for suffering during his time in prison.

2.2 In 1992, Mr. A. left Egypt on security grounds for Saudi Arabia, and thereafter to Pakistan, where the complainant and her children joined him. After difficulties with passport non-renewal and confiscation by the Egyptian Embassy in Pakistan, the family left for Syria under assumed Sudanese identities. There they were visited by family members from Egypt, who were arrested and had their passports confiscated upon their return to Egypt, in order to determine Mr. A.'s whereabouts. In December 1995, the family moved to Iran under the same Sudanese identities.

2.3 In 1998, Mr. A. was tried for terrorist activity in absentia before a higher military court in Egypt, along with 100 other accused. He was found guilty of belonging to an Islamic fundamentalist group, Al-Gihad, having intention to overthrow the Egyptian Government, and was sentenced, without possibility of appeal, to 25 years' imprisonment. In 2000, concerned that warming ties between Egypt and Iran might result in his being returned to Egypt, Mr. A. and his family purchased air tickets under Saudi Arabian identities for Canada, and claimed asylum during a transit stop in Stockholm, Sweden, on 23 September 2000.

2.4 In his asylum application, he claimed that he had been sentenced to "penal servitude for life" in absentia, and that if returned, he would be executed as other accused allegedly had been. The complainant contended that, if returned, she would be detained for many years, on account of her status as Mr. A.'s wife and corresponding guilt by association. On 23 May 2001, the Migration Board invited the Swedish National Police Board (Special Branch) to submit its opinion in the matter, and the Special Branch subsequently conducted an interview with Mr. A. On 3 October 2001, with legal representation, the Migration Board held a "major inquiry" with Mr. A. and the complainant. On 30 October 2001, the Swedish National Police Board (Special Branch) informed the Migration Board that Mr. A. had a leading position in an organization guilty of terrorist acts and was responsible for activities of the organization. The case of Mr. A. and the complainant was thus remitted, on 12 November 2001, to the Government for decision pursuant to chapter 7, section 11 (2) (2) of the Aliens Act. In the Board's view, on the information before it, Mr. A. could be considered entitled to refugee status, however the Special Branch assessment, which the Board saw no reason to question, pointed in a completely different direction. The necessary weighing of Mr. A.'s possible need for protection, as against the Special Branch's assessment, was thus to be made by the Government. On 13 November 2001, the Aliens Appeals Board, to which the case had been forwarded, shared the Migration Board's assessment of the merits and was also of the view that the Government should decide the matter.

2.5 On 18 December 2001, the Government rejected the asylum applications of Mr. A. and the complainant. The reasons for these decisions are omitted from the text of this decision at the State party's request and with the agreement of the Committee. Accordingly, it was ordered that Mr. A. be deported immediately and the complainant as soon as possible. On 18 December 2001, Mr. A. was deported, while the complainant evaded police custody; her whereabouts remain unknown.

The complaint

3.1 The complainant submits that her case is intimately bound up with that of her husband Mr. A., who denies any terrorist links. She alleges she would be of great interest to the Egyptian authorities, as she would be expected to possess valuable information about her husband and his activities. There is thus a clear risk of detention and that Egyptian authorities would try and obtain information from her through physical violence and torture.

3.2 The complainant criticizes the lack of information as to the content and sources of t Special Branch's information on Mr. A., observing that in any event the desire of the Egyp authorities to have him in custody on account of his previous conviction was clear. The complainant questions the value of the security guarantee provided by the Egyptian authorities. Neither its contents nor its author are known to her. In any event, the Egyptiar authorities are more likely to pursue their own objectives than respect assurances provided foreign States. In a subsequent submission, the complainant refers to a statement (urgent a of 10 January 2002 by Amnesty International considering the complainant to be at risk of t in the event of a return to Egypt due to her family links. In addition, Amnesty Internationa considered the security guarantee insufficient, as Mr. A.'s whereabouts since his arrival in on 18 December 2002 were unknown and had not been advised to family, counsel or any o

3.3 The complainant argues that, in contrast to the Convention on the Status of Refugee Convention against Torture does not contain any exclusion clause on security grounds and its protection [illegible] absolute. In addition, the expulsion decision cannot be appealed, while a n application requires new circumstances to be presented, of which there are none.

3.4 Generally, the complainant refers to a report in 2000 of the United States State Department that respect for fundamental human rights in Egypt is poor. She contends that security forces mistreat and torture persons suspected of terrorist connections, and conduct arrests of such persons. A 1997 report of Amnesty International suggests a number of wor have been subjected to human rights violations, including arbitrary detention, on account o family links.

The State party's submissions on the admissibility and merits of the complaint

4.1 By submission of 8 March 2002, the State party contests both the admissibility and merits of the complaint. It regards the claim of substantial grounds to fear torture in the ev a return to Egypt to lack, in light of the security guarantees provided and the other argumer on the merits, the minimum substantiation necessary to render a complaint compatible witl article 22 of the Convention.[a]

4.2 On the merits, the State party sets out the particular mechanisms of the Aliens Act applicable to cases such as the complainant's. While asylum claims are normally dealt wi the Migration Board and then the Aliens Appeals Board, under certain circumstances eithe may refer the case to the Government, appending its own opinion. This constellation arise matter is deemed to be of importance for the security of the realm or otherwise for security general or for the State's relations to a foreign power (chapter 7, section 11 (2) (2) of the A the Migration Board refers a case, it must first be forwarded to the Aliens Appeals Board v provides its own opinion on the case.

4.3 An alien otherwise in need of protection on account of a well-founded fear of perse at the hands of authorities or others on account of reasons listed in the Convention on the S of Refugees (under chapter 3, section 2, of the Act) may however be denied a residence pe certain exceptional cases, following an assessment of an alien's previous activities and requirements of the country's security (chapter 3, section 4 of the Act). However, no pers risk of being tortured may be refused a residence permit (chapter 3, section 3 of the Act). addition, if a person has been refused a residence permit and has had an expulsion decisior issued against him or her, an assessment of the situation at the enforcement stage must be made to avoid that an individual is expelled to face, inter alia, torture or other cruel, inhuman or degrading treatment or punishment.

4.4 The State party recalls Security Council resolution 1373 of 28 September 2001, which enjoins all Member States to deny safe haven to those who finance, plan, support or commit terrorist acts, or themselves provide safe haven. The Council called on Member States to take appropriate measures, consistent with international human rights and refugee law, to ensure asylum-seekers have not planned, facilitated or participated in terrorist acts. It also called upon Member States to ensure, in accordance with international law, that the institution of refugee status is not abused by perpetrators, organizers or facilitators of terrorist acts. In this context, the State party refers to the Committee's statement of 22 November 2001, where the Committee expressed confidence that responses to threats of international terrorism adopted by States parties would be in conformity with their obligations under the Convention.

4.5 With reference to the specific case, the State party details the information obtained by its security services with respect to Mr. A. which led him to be regarded as a serious security threat. At the State party's request, this information, while transmitted to counsel for the complainant in the context of the confidential proceedings under article 22 of the Convention, is not set out in the Committee's present decision, which is publicly available.

4.6 The State party observes that on 12 December 2002, after referral of the case from the Migration and Aliens Appeals Boards, a State secretary of its Ministry of Foreign Affairs met with a representative of the Egyptian Government in Cairo, Egypt. At the State party's request and with the Committee's agreement, details of the identity of the interlocutor are not reflected in the text of the present decision. As the State party was considering excluding Mr. A. from protection under the Refugee Convention, the purpose of the visit was to determine the possibility, without violating Sweden's international obligations, including those arising under the Convention, of returning Mr. A. and his family to Egypt. After careful consideration of the option of obtaining assurances from the Egyptian authorities with respect to future treatment, the State party's Government concluded it was both possible and meaningful to enquire whether guarantees could be obtained that Mr. A. and his family would be treated in accordance with international law upon return to Egypt. Without such guarantees, return to Egypt would not be an alternative. On 13 December 2002, requisite guarantees were provided by the official interlocutor in question.

4.7 The State party then sets out in detail its reasons for refusing, on 18 December 2001, the asylum claims of Mr. A. and the complainant. These reasons are omitted from the text of this decision at the State party's request and with the agreement of the Committee.

4.8 In response to the Committee's request for information on the whereabouts and conditions of detention of Mr. A. (see paragraph 1.2 above), the State party informs that he is currently held at Tora prison, Cairo, in pre-trial detention pending a retrial for which preparations are in progress. The prison is reportedly of a comparatively high standard and he is said to be detained in a type of cell normally reserved for persons convicted of non-violent offences. In accordance with the agreement of Egyptian authorities, the Swedish Ambassador to Egypt met Mr. A. on 23 January 2002 in the office of the prison superintendent. He was not restrained by handcuffs or feet chains. He was dressed in ordinary clothes, with hair and beard closely trimmed. He appeared to be well-nourished and showed no signs of physical abuse.

He did not seem to hesitate to speak freely, and told the Ambassador that he had no complaints as to his treatment in prison. Asked whether he had been subjected to any abuse, Mr. A. made no such claim. When informed that the guarantees issued by the Egyptian authorities precluded his sentence to death or execution, he was visibly relieved.

4.9 On 10 February 2002, the Swedish national radio reported on a visit by one of its correspondents with Mr. A. in the office of a senior official at Tora prison. He was dressed in dark-blue jacket and trousers, and showed no external signs of physical abuse. He did have some problems moving around, which he ascribed to a long-term back problem. He complained about not being allowed to read and about lack of a radio, as well as lack of permission to exercise.

4.10 On 7 March 2002, the Swedish Ambassador again visited Mr. A. in Tora prison. He showed no signs of having been subjected to torture. He explained that his back problems had been bothering him considerably, and that he had been provided medication for this and a gastric ulcer condition. He had recently put in a request for transfer to a hospital ward in order to receive better medical treatment and hoped this would be granted. At the Ambassador's request, he removed his shirt and undershirt and turned around, showing no signs of torture.

4.11 As to the application of the Convention, the State party refers to the Committee's constant jurisprudence that an individual must show a foreseeable, real and personal risk of torture. Such a risk must rise beyond mere theory or suspicion, but does not have to be highly probable. In assessing such a risk, which standard is incorporated in Swedish law, the guarantees issued by the Egyptian Government are of great importance. The State party, in the absence of Committee jurisprudence on the effect of such assurances, refers to relevant decisions of the European organs under the European Convention on Human Rights.

4.12 In *Aylor-Davis v. France* (judgement of 20 January 1994), it was held that guarantees from the receiving country, the United States, were found to eliminate the risk of the applicant being sentenced to death. The death penalty could only be imposed if it was actually sought by the State prosecutor. By contrast, in *Chahal v. United Kingdom* (judgement of 15 November 1996), the Court was not persuaded that assurances from the Indian Government that a Sikh separatist that he "would enjoy the same legal protection as any other Indian citizen, and that he would have no reason to expect mistreatment of any kind at the hands of the Indian authorities" would provide an adequate guarantee of safety. While not doubting the Indian Government's good faith, it appeared to the Court that despite the efforts of inter alia the Indian Government and courts to bring about reform, violations of human rights by members of the security forces in Punjab and elsewhere in India was a recalcitrant and enduring problem. The case law thus suggests that guarantees may be accepted where the authorities of the receiving State can be assumed to have control of the situation.

4.13 Applying this test, the current case is more in line with *Aylor-Davis*. The guarantees were issued by a senior representative of the Egyptian Government. The State party points out that if assurances are to have effect, they must be issued by someone who can be expected to be able to ensure their effectiveness, as, in the State party's view, was presently the case in light of the representative's position. In addition, at the December meeting between the Swedish State secretary and the Egyptian official, it was made clear to the latter what was at stake for Sweden: as article 3 is of absolute character, the need for effective guarantees was explained at length.

The State secretary reaffirmed the importance for Sweden to abide by its international obligations, including the Convention, and that as a result specific conditions would have to be fulfilled in order to make any expulsion possible. It was thus necessary to obtain written guarantees of fair trial, that he would not be subjected to torture or other inhuman treatment, and that he would not be sentenced to death or executed. The trial would be monitored by the Swedish Embassy in Cairo and it should be possible to visit Mr. A. regularly, even after conviction. Moreover, his family could not be subjected to any kind of harassment. It was made clear that Sweden found itself in a difficult position, and that Egypt's failure to honour the guarantees would impact strongly on other European cases in the future.

4.14 The State party expands on the details of these guarantees. The details have been omitted from the text of the decision by the request of the State party, and with the consent of the Committee. The State party points out that the guarantees in question are considerably stronger than those provided in *Chahal* and are couched much more affirmatively, in positive terms. The State party also observes that Egypt is a State party to the Convention, has a constitutional prohibition on torture and acts of, or orders to torture, are serious felonies under Egyptian criminal law.

4.15 The State party observes that the complainant fears being subjected to treatment contrary to the Convention as a result of being Mr. A.'s wife. She makes no independent claim of political activity, or of detention or mistreatment in Egypt. In this light and in view of the assurances, it was thus determined that she did not qualify for refugee status. However in the light of her close association with Mr. A. and the general situation in Egypt, she may be considered in need of the protection extended to her by means of the guarantees obtained. In evaluating the prospects of respect for these guarantees, it is naturally of interest to know the extent of respect for the corresponding guarantee with respect to Mr. A., and, in the light of the experiences monitored with Mr. A., it may be assumed that the guarantees will also be effective with respect to the complainant. The State party points out, in this respect, that the cases of Mr. A. and the complainant have garnered wide attention internationally as well as in Sweden. The Egyptian authorities, being aware of this, must be taken to be sufficiently astute to ensure no ill-treatment would befall the complainant.

4.16 The State party concludes that its efforts in this case fully satisfy its international human rights obligations, including under the Convention, while complying with its commitments under Security Council resolution 1373. The complainant has not shown, in the circumstances, substantial grounds to fear torture in the event of a return, and thus her expulsion would not be in violation of the Convention.

The complainant's comments on the State party's submissions

5.1 By letter of 20 January 2003, the complainant responded to the State party's submissions. She affirms that Mr. A. was not involved in any terrorist activities, and thus resolution 1373 is not applicable. In any event it could not override other international obligations such as the Convention. In Pakistan, he was engaged by the Kuwaiti Red Crescent for humanitarian missions, while in Iran he studied Islamic subjects at university in order to receive a scholarship and thus support his family. She goes on to dispute aspects of the information supplied by the Swedish Special Branch concerning Mr. A.'s alleged activities.

5.2 According to the complainant, the report of the Special Branch did not prove that he was involved in terrorist activities. In any case, there was no information that he had performed any such acts in Sweden. The report was not provided to their counsel, as everything but the opening sentence and the conclusion that he was a threat to national security had been blacked out, and it was thus very difficult to refute the conclusions. Similarly, the decision of 18 December 2001 denying the claim for asylum and ordering expulsion, a decision that was executed with respect to Mr. A. the same day and only reached the complainant the following day, did not detail the Special Branch's information.

5.3 As to the assurances provided by the Egyptian authorities, the complainant contends they are not sufficiently explicit, and it is unknown how extensive efforts were on the Egyptian side to guarantee implementation of the assurances, particularly given that they were provided a day after being requested. The complainant points out that the Swedish side did not require either any plans from the Egyptian authorities as to the manner of treatment during and after arrival or any assurance of an ability to visit for inspections regularly. As to the constitutional and legislative prohibitions on torture, the complainant observes that the practical reality is that torture is frequently resorted to by the security agencies.

5.4 As to the radio interviewer's visit with Mr. A., the interviewer notified counsel for the complainant that he had asked Mr. A. whether he had been tortured, and he stated that he was unable to answer. In counsel's view, it is thus plausible to assume that he had been, and that he was able to so signal to the interviewer whereas he felt he could not to the Ambassador. In addition, Mr. A.'s counsel in Egypt is allegedly of the view he has been tortured.

5.5 The complainant disputes the State party's view of the jurisprudence of the European organs. She views her case as closer to that in *Chahal*, where the guarantees offered by India were not considered adequate. India, in contrast to Egypt, is a democratic State, with an effective judicial system. The security apparatus is generally controlled, and the fear of torture was confined to Punjab, a small area. By contrast, torture is widespread in Egypt and practised by many agencies, particularly the security services. If the Indian guarantee was not inadequate, a fortiori the Egyptian one cannot be. Moreover, in the complainant's view, the position and responsibilities of the representative providing the assurances reduces the effectiveness of the assurance given. The complainant also considers the assurance provided by the Egyptian Government to be comparable to, rather than stronger than, the one at issue in *Chahal*.

5.6 As to the prophylactic effect of publicity, the complainant argues that despite extensive publicity Mr. A.'s situation does not appear to have been relieved, and in any event it is unclear for how long such an effect would last. Thus, little store can be placed upon this factor by way of protection for the complainant.

5.7 The complainant concludes that the Egyptian guarantee is inadequate and insufficient, in the light of Mr. A.'s experience and the monitoring to which he is subject, as well as the realities of the practice of the Egyptian security services. It cannot displace substantial grounds to believe that she, as the wife of an alleged terrorist, would be at risk of torture in Egypt in order to obtain information concerning, or to coerce, Mr. A.

Supplementary submissions of the parties

6.1 By additional submissions of 27 September 2002, the State party updated the Committee on the situation of Mr. A. Subsequent to the visits described above, the Swedish Embassy in Egypt continues to visit him once a month, in principle, with further visits taking place on 14 April, 27 May, 24 June, 22 July, and 9 September 2002. For the third visit in April, he was properly dressed and appeared to feel well considering the circumstances. He had no problems moving around and did not seem to have lost weight. When asked whether the Egyptian authorities had reneged on their agreement and maltreated him, he was initially evasive, claiming that the only problem was the lack of information regarding his retrial. When again asked as to his treatment, he answered he had not been physically abused or otherwise maltreated. His only complaint was about sleeping problems from his bad back. A doctor had seen him the previous day and promised a thorough examination. When finally asked whether the friendly atmosphere during the visit was a sign he was all right and being treated well, he nodded affirmatively.

6.2 During the fourth visit in May with the Swedish Ambassador, the general circumstances surrounding the visit were similar to those of the previous one; he looked well and healthy. He told Embassy staff that he had had a kidney infection and received treatment. His back problems had allegedly improved and he had been promised an X-ray examination. He complained about general prison conditions, such as the absence of proper beds or toilets in the cell. Family members would soon be able to visit him.

6.3 During the fifth visit in June, again by the Ambassador, Mr. A. appeared to be feeling well and was able to move without problems. He did not seem to have lost weight. No new information was provided concerning his state of health. He again mentioned his back problems and that he had been promised medical attention. Family members had visited the previous day and a routine of fortnightly visits from family and counsel had been established. He was aware of the Embassy's tasks and appeared to welcome the visits. He knew what the Embassy wished to be informed of and he gave straightforward answers to the Ambasssador's questions. Upon leaving, he was observed in seemingly relaxed conversation with two prison guards.

6.4 During the sixth visit in July, by the Ambassador, Mr. A. looked well and was dressed cleanly and had no problems of movement. The atmosphere was relaxed, with prison conditions allegedly the same as previously. Nothing new transpired regarding his health and treatment. He stated that he was not badly treated, and a family visit was expected later in the day. The seventh visit, in September, also with the Ambassador, was again relaxed. Mr. A.'s state of health was unchanged, having received an X-ray examination early in the month and awaiting results. The conditions of detention were unchanged. He was able to receive family visits fortnightly. He had been questioned a month previously, but had not heard further news as to his retrial.

7.1 On 22 October 2002, the complainant responded to the State party's supplementary submissions. On 23 January 2002, her parents-in-law had visited Mr. A. at Tora prison, with an Egyptian lawyer. Her mother-in-law alleges that he walked with difficulty and was supported by a prison officer. He seemed pale, weak, seemingly in shock and near breakdown. His eyes, cheeks and feet were allegedly swollen, with his nose larger than usual and bloodied. He told that he had been tied and hung upside down while transported to the prison, and then being constantly blindfolded and subjected to advanced methods of interrogation, including electric shocks. He said he was told the guarantees provided to the Swedish Government were worthless. This visit was then allegedly interrupted by the arrival of the Swedish Ambassador.

7.2 Mr. A.'s parents made these observations public. They pursued efforts to meet with him to no avail, and were informed that this depended on their behaviour. On April 16, at short notice, they again visited him in prison. He allegedly whispered to his mother that he had been further tortured by electric shocks after the January visit, and held in solitary confinement for about 10 days. His arms and legs were tied behind his back and he could not relieve himself. He said he had told the Swedish Ambassador about the torture, and that prison officers had urged him to decline further visits from the Ambassador. He stated that officers had told him his wife would be returned soon, and they threatened to assault her and his mother sexually. He said he remained in solitary confinement, in a cell measuring two square meters, without windows, heat or light and that, while not tied, he could only visit the toilet once every 24 hours, which caused him kidney problems.

7.3 From April, the parents were able to make monthly visits, and from July fortnightly, in a location different from where the Swedish Ambassador met Mr. A. Often, further visits were declined for various reasons. Officials had allegedly urged the parents not to disclose publicly information about Mr. A., and to encourage the complainant to return. The parents allegedly cannot provide further information for fear of adverse effects on Mr. A.

7.4 While conceding that there are contradictions between the State party's accounts of the visits with those of the parents, the complainant points out there are some commonalities, for example in detention conditions and certain evasiveness in Mr. A.'s replies. Necessarily, diplomatic contacts are formal, and Mr. A. would be reluctant to disclose elements within earshot of supervising officers which could reflect negatively on him. Rather, international standards in such situations require private and unsupervised contact with a prisoner, and qualified medical staff must be able to examine a prisoner suspected of torture. Failure to comply with such standards reduces the value of the State party's observations. According to the complainant, the State party's diplomatic representatives are not medically trained to determine signs of torture, and may skew their interpretations in favour of their Government. By contrast, parents and family are much more familiar with their son's manners and he can whisper to them out of earshot of officials. As to the visit of the Swedish radio correspondent, he was only able to see Mr. A.'s face and hands. In any event, he complained of back pains and walked with difficulty, providing no comment to a direct question whether he had faced torture.

7.5 As a result, the complainant argues that the State party has not discharged its burden of proof of showing Mr. A. has not been tortured. Plainly, the interests of the State security agencies in obtaining information, if necessary by torture, outweigh broader foreign policy interests to abide by their international assurances. As Mr. A. remains under investigation in these circumstances, allegedly for attacks on the Egyptian Embassy in Islamabad, Pakistan, in 1995 and on a tourist bus in Luxor, Egypt, in 1997, it is said to be likely that she will be detained, interrogated and tortured to obtain information from her or to induce her husband to cooperate with the investigators.

8.1 On 29 January 2003, the complainant supplied a briefing note dated January 2003 from Amnesty International, in which it expressed the view that the complainant would be at risk of torture in the event of being returned, and that the guarantees provided were not effective. Amnesty International also refers to other relatives of political prisoners who had been allegedly detained and subjected to ill-treatment. The complainant also refers to advice obtained from Thomas Hammarberg, Secretary-General of the Olof Palme International Centre, who was of the personal view that the monitoring of Mr. A.'s situation had been problematic.

9.1 On 26 March 2003, the State party updated on its contacts with Mr. A. since its previous submission. Since the visit in September 2002, the Swedish Embassy continued to monitor his condition, visiting him in November 2002, January 2003, and March 2003. At the eighth visit, on 4 November 2002 with the Ambassador and other officials, Mr. A. had no problems moving around and gave a healthy impression, informing that his back had been examined that morning. He was scheduled to be later examined by a specialist. In his own view, opportunities to obtain medical attention had improved as a result of the Embassy visits. He confirmed he had not been subjected to physical abuse, complaining that, as a convicted person, he was held in a part of the prison for unconvicted persons. He had not received information about his retrial. In the Ambassador's assessment of the meeting, he concluded there was no indication that the Egyptian authorities had breached their agreement, while the detention was admittedly mentally trying.

9.2 The ninth visit, by the Ambassador and staff, took place on 19 January 2003. Mr. A. appeared well, and had observed Ramadan to the extent possible. Since December, he was no longer kept apart from other prisoners. Prisoners were able to move around rather freely during the days, being locked up overnight between 4 p.m. and 8 a.m. He appreciated the ability to walk in the prison courtyard. While the cell was crowded at night, the situation had generally improved. Further back examinations had been scheduled at the prison hospital. No further information had been provided on his retrial, and his lawyer had only visited him once. His family however visited every two weeks. The Ambassador's assessment was that he was more open and relaxed. Uncertainty regarding a future retrial and sentencing appeared to weigh most heavily upon him.

9.3 The tenth visit, this time by a senior official from the Ministry of Foreign Affairs, Stockholm, as well as the Ambassador and Embassy staff, took place on 5 March 2003 and lasted over an hour in a relaxed atmosphere. The prison superintendent informed the visitors that Mr. A. was detained in that section of the prison for convicted persons serving sentences of 3 to 25 years. Mr. A. seemed glad to be visited again. He looked well and appeared to be able to move without problems. He said he had been moved in January 2003 as a result of his health problems, and had had an MRI examination of his back. As a trained pharmacist, he could administer his own medication. He said he was treated as other prisoners. As far as legal representation was concerned, he had changed to a new lawyer, who aimed to have his sentence reduced.

9.4 The State party goes on to detail certain allegations made by Mr. A., the actions it took by way of response thereto and invites the Committee to draw a variety of inferences from the circumstances described. At the request of the State party and with the Committee's agreement, details of these matters have been deleted from the text of the present decision.

9.5 In the context of the case, the State party draws the Committee's attention to the interim report[b] submitted in July 2002 by the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, submitted in accordance with resolution 56/143 of 19 December 2001. In that report, the Special Rapporteur appealed to all States "to ensure that in all appropriate circumstances the persons they intend to extradite, under terrorist or other charges, will not be surrendered unless the Government of the receiving country has provided an unequivocal guarantee to the extraditing authorities that the persons concerned will not be subjected to torture or any other forms of ill-treatment upon return, and that a system to monitor the treatment of the persons in question has been put into place with a view to ensuring that they are treated with full respect for their human dignity" (para. 35). The State party argues, in the light of the information presented, that it has acted in the manner recommended by the Special Rapporteur. Prior to the decision to expel Mr. A., guarantees were obtained from the very person in the Egyptian administration best placed to ensure their effectiveness. The guarantees given correspond in content to the requirements specified by the Special Rapporteur. In addition, a monitoring mechanism was put into place and has been functioning for over a year.

9.6 The State party concludes that since the guarantees concerning Mr. A. have served their purpose, it may be assumed that the assurances for the complainant will protect her from torture by the Egyptian authorities. Thus, the complainant has not substantiated her claim that there are substantial grounds for believing she would be in danger of torture if returned. An enforcement of the expulsion order would accordingly not, in the present circumstances, constitute a violation of article 3.

10.1 By letter of 23 April 2003, the complainant, while acknowledging the visits that have taken place, argues that conclusions that Mr. A. is being treated well are not justified, as the monitoring was not performed in accordance with generally accepted international standards. In particular, the visits were not in private and no medical examinations have been performed; thus, he would be reluctant to speak freely. Mr. A. allegedly told his mother that he had, in January 2003, realized that ill-treatment would continue whether or not he tried to veil it, and thus he had been forthcoming. According to the complainant, this incident also shows that the testimony of Mr. A.'s parents is not exaggerated and closer reflects the real conditions of detention. In support of these submissions, the complainant refers to matters raised by the State party in paragraph 9.4 above.

10.2 The complainant states that no information is available as to the time of an eventual retrial. It remains uncertain whether the allegations against Mr. A. can be proved in a court procedure affording due process guarantees. In the complainant's view, it is not surprising that the Egyptian officials denied torture. However, in the complainant's view, it is difficult to understand why a lie detector was used if evidence obtained by it cannot be admitted in court. While the State party refers to medical examinations that have taken place, they have not been provided, and their objectivity would have to be questioned.

10.3 In terms of the reference to the Special Rapporteur's call for "unequivocal guarantees", the complainant argues that the information on ill-treatment provided demonstrates that the guarantees have not been adequate, as called for by the Special Rapporteur. Thus, the complainant, who is closely linked to her husband, followed his activities in exile and will be inevitably associated with his activities, is at a high and well-founded risk of torture. Her removal to Egypt would thus violate article 3 of the Convention.

Issues and proceedings before the Committee

11.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. In terms of the State party's argument that the complaint is insufficiently substantiated, for purposes of admissibility, the Committee considers that the complainant has demonstrated a sufficiently arguable case for determination on the merits. In the absence of any further obstacles to the admissibility of the complaint advanced by the State party, the Committee accordingly proceeds with the consideration of the merits.

12.1 The issue before the Committee is whether removal of the complainant to Egypt would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected by the Egyptian authorities to torture. In so doing, the Committee refers to its consistent practice of deciding this question as presented at the time of its consideration of the complaint, rather than as presented at the time of submission of the complaint.[4] It follows that intervening events transpiring between submission of a complainant and its consideration by the Committee may be of material relevance for the Committee's determination of any issue arising under article 3.

12.2 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Egypt. It follows from this framing at the issue that the Committee is not asked to decide whether or not Mr. A.'s expulsion from Sweden violated its obligations under article 3, or any other articles of the Convention, much less whether he has or has not endured torture at the hands of the Egyptian authorities. In assessing the risk to the complainant, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

12.3 In the present case, the Committee observes that the complainant's husband, Mr. A., was returned to Egypt in December 2001, almost two years prior to the Committee's consideration of the case. The Committee observes that Mr. A.'s detention has since been monitored by regular visits from the State party's Ambassador, Embassy staff and high-level representatives of the State party, as well as his family, and that his medical care and conditions of detention were reported to be adequate. The Committee observes that the complainant founds her allegation of a risk of torture solely on her relationship with her husband, Mr. A., and contends that she will be exposed to torture as a result of this link. The Committee refers in this respect to its previous jurisprudence where it rejected a claim of torture arising by virtue of a family relationship to the leadership of an allegedly terrorist organization - such family ties, of themselves, are generally insufficient to ground a claim under article 3.[d] In light of the passage of time, the Committee is also satisfied by the provision of guarantees against abusive treatment,[e] which also extend to the complainant and are, at the present time, regularly monitored by the State party's authorities in situ. It is also relevant to the Committee's consideration of the case that Egypt, a State party to the Convention, is directly bound properly to treat prisoners within its jurisdiction, and any failure to do so would be a breach of the Convention. In the light of the above circumstances, the Committee considers that there is not, at this time, a substantial personal risk of torture of the complainant in the event of her return to Egypt.

13. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the complainant has not substantiated her claim that she would be subjected to torture upon return to Egypt, and therefore concludes that the complainant's removal to that country at the present time would not constitute a breach by the State party of article 3 of the Convention.

Notes

[a] See, for example, *Y. v. Switzerland*, case No. 18/1994, decision adopted 17 November 1994.

[b] A/57/173 (2 July 2002).

[c] See, for example, *H.M.H.I. v. Australia* case No. 177/2001, decision adopted 1 May 2002.

[d] See, for example, *M.V. v. The Netherlands* case No. 201/2002, decision adopted 30 May 2003.

[e] The Committee against Torture has viewed and considered the provisions of the guarantees provided.

Communication No. 203/2002

Submitted by:	A.R. (represented by counsel, Mr. R. Himja)
Alleged victim:	The complainant
State party:	The Netherlands
Date of complaint:	14 March 2002

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2003,

Having concluded its consideration of complaint No. 203/2002, submitted to the Committee against Torture by Mr. A.R. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is A.R., an Iranian national, born on 30 June 1966, currently residing in the Netherlands and awaiting deportation to Iran. He claims that his forcible return to Iran would constitute a violation by the Netherlands of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 22 March 2002 the Committee transmitted the complaint to the State party for comments.

Facts as submitted by the complainant

2.1 Counsel submits that, after the Iranian revolution in 1979, the complainant became associated with a political party, the Fedayeen Khalg-Iran. He became active in the organization whilst in secondary school. In January 1983 he was arrested on suspicion of distributing illegal pamphlets and causing disorder, and was detained for 25 days. During this time, he alleges that he was severely beaten. Upon release he was removed from his school.

2.2 The complainant continued his political activities. These consisted of handing out illegal pamphlets and attending illegal gatherings. He was arrested again in July 1983, and brought before a Revolutionary Court, which sentenced him to two years' imprisonment. During his first two weeks in prison he was interrogated, tortured and maltreated. He was twice taken out for a mock execution, for which he was blindfolded and put against a wall, with shots being fired. He was then kept in solitary confinement for a month and a half. At the end of his term of imprisonment, the complainant was required to sign a statement that he would not engage in political activities, on pain of death.

2.3 After his release, the complainant was required to carry out his military service, during which time he claims he was discriminated against, in that he had to perform dangerous tasks at the front. After completing his military service, he took up tertiary studies at a private university, as he was not permitted to study at a regular university, and then obtained employment. In 1989 he resumed his political activities with a group of people associated with the Fedayeen-e-Khalg. The group distributed pamphlets and a political periodical, wrote slogans on walls, and collected financial aid for families of political detainees.

2.4 On the evening of 30 April 1994, the group distributed pamphlets and wrote slogans in certain areas of Tehran. The following morning, the complainant noticed that some of the slogans were unfinished, and learned that two members of the group had not notified them that they had finished work. Fearing that the activities of his group had been detected, the complainant fled Tehran. He later learned that officials had searched his apartment and taken away his belongings, including illegal pamphlets and other political material. He also learned that his father had been detained and interrogated by officials, and released on condition that he keep the authorities informed about the complainant's whereabouts. The complainant fled Iran on 21 June 1994.

2.5 After arriving in the Netherlands, the complainant became involved in a number of political activities, including co-founding an organization called Nabard, an organization of Iranian refugees which comments on the human rights situation in Iran. He was involved in writing and publishing reports for this group, although his name did not appear in them. Nabard has close connections with a Fedayeen group in France, and opposition groups in Iran. In 1996, the complainant was told by his brother, who had obtained asylum in Sweden, that a letter from the complainant to his father had been intercepted by the authorities, and that his father had been detained for not apprising the authorities about receiving the letter.

2.6 On 14 July 1994 the complainant applied for asylum in the Netherlands. His application was rejected by the State Secretary of the Department of Justice on 30 August 1994. An internal review of this decision, requested by the complainant, confirmed the original decision, and a subsequent appeal to the District Court in The Hague was dismissed on 11 February 1997. The Court found that the complainant had had no problems with the Iranian authorities between 1985 and 1994, and that there was no objective evidence regarding the supposed arrest of his fellow group members in May 1994.

2.7 On 16 June 1997 the complainant filed a second application for refugee status, this time accompanied by a letter from counsel and Iranian documents said to have been issued by the Revolutionary Prosecutor's Office in May 1994, namely a writ of summons, and a copy of a document allegedly showing that the author's residence had been placed under seal. This application was also rejected, as the Dutch authorities did not consider the Iranian documents to be authentic. An internal review confirmed the original decision, and an appeal to the District Court in The Hague was dismissed on 23 February 2001. The Court found that the first asylum application had been dealt with comprehensively, and agreed that the Iranian documents were not authentic, which cast doubt on the complainant's story. It also found that there was no link between the complainant's political activities in Iran and those subsequently carried out in the Netherlands.

2.8 On 18 February 2002, the Aliens Police advised the complainant that he was required to leave the Netherlands.

The complaint

3.1 The complainant claims that he fears being subjected to torture if he is returned to Iran by the Dutch authorities, and that his return to Iran would constitute a violation of article 3 of the Convention. He states that he has previously been subjected to torture whilst in custody because of his political activities in Iran, and that, given his subsequent political activities both in Iran and in the Netherlands, he is in danger of being subjected to torture again if returned to Iran. In this regard he also refers to the general human rights situation in Iran, particularly reports of torture.

3.2 The complainant argues the Dutch authorities were wrong to conclude that he had no difficulties with the Iranian authorities between 1985 and 1994, and that there was no link between his political activities in Iran and those in the Netherlands. He claims that his first asylum application was not properly dealt with by the Dutch authorities.

The State party's observations on admissibility and merits

4.1 By note dated 6 May 2002, the State party informed the Committee that it does not object to the admissibility of the complaint; its observations on the merits of the complaint were transmitted by note of 23 September 2002.

4.2 The State party contends that the complainant's return would not violate its obligations under article 3 of the Convention. It provides a detailed description of the legal processes by which an application for refugee status in the Netherlands may be made, and how administrative and judicial appeals may be prosecuted. The relevant legislative framework for the admission and expulsion of aliens is set out in the Aliens Act of 1965, as well as related enactments and regulations. Asylum-seekers are interviewed twice by the authorities, and on the second occasion the focus is on the person's reasons for leaving their country of origin. Legal counsel may be present during the interviews. The asylum-seeker receives a copy of a report made after the interviews, and has two days to submit corrections or additions to the report. A decision is then made by an official of the Immigration and Naturalization Service (IND) on behalf of the State Secretary for Justice. If an application is denied, the applicant may lodge an objection. If a prima facie case of fear of persecution is demonstrated, an Advisory Committee will review the decision at first instance, and interview the applicant. A representative of UNHCR is invited to attend the interview, and to make UNHCR's views known. A recommendation is made to the State Secretary for Justice, who decides the matter. If the objection is dismissed, an appeal can be lodged with the District Court. No further appeal is possible.

4.3 The State party attests that its Ministry of Foreign Affairs periodically issues country reports on the situation in countries of origin to assist the IND in its assessment of asylum applications. From 1994 to early in 1995, based on a country report prepared in 1991 from which it appeared that the human rights situation in Iran was alarming, Iranian asylum-seekers were eligible for provisional residence permits. This process then ceased, following an updated country report which indicated that the overall situation in Iran had improved.

4.4 In relation to the petitioner's personal circumstances, the State party summarizes the details provided by the complainant to the IND during the first and second interviews of each of his two applications for refugee status, and of the relevant administrative and judicial proceedings. In particular, it notes that the Iranian documents submitted by the complainant were thoroughly investigated by the Ministry of Foreign Affairs and not found to be authentic.

4.5 The State party notes that, in relation to a complaint concerning article 3, the Committee must decide whether there are specific grounds indicating that the individual concerned would be personally at risk of torture if returned to their country.[a] Substantial grounds in this regard require more than a mere possibility of torture, but do not need to be such that torture is highly likely to occur.[b] It contends that the general human rights situation in Iran is not such that any person being returned to Iran would be in danger of torture. In relation to the complainant, it notes first that his support for the banned political organization Fedayeen is not itself sufficient reason to assume that he would be tortured upon return; thus, recent country reports record no recent cases of convictions of Fedayeen members. Secondly, following the complainant's release from prison in 1985, he had no significant difficulties with the Iranian authorities, and apparently did not see himself as being at risk, as he remained in the country until 1994. The State party notes that, following his release from prison, the complainant served normally in the armed forces, suggesting that he was not the object of any suspicion on the part of the authorities. It states that the problems the complainant refers to following his release from prison were comparatively minor.

4.6 In relation to his activities in May 1994, the State party notes that the complainant provided no concrete evidence that any of his fellow group members were arrested. Similarly, there is no objective evidence attesting to the complainant's father being arrested - the only evidence comes from family sources.

4.7 The State party contends that the complainant's political activities in the Netherlands do not place him at any personal risk of being tortured upon return to Iran, because there is neither any claim nor any evidence that the Iranian authorities are aware of his activities in the Netherlands.

4.8 Finally, the State party denies that the complainant was not given sufficient opportunity to tell his story during his first asylum application. His second application simply contained a more detailed account of events, not a different account. In any event new material, such as the documents produced by the complainant, were properly investigated and considered by the authorities. In this regard, the Iranian documents were found to be inauthentic, on the basis that they did not conform to standard formatting practices for such documents in Iran.

4.9 In the State party's opinion, there is no basis for believing that the complainant runs a foreseeable, real and personal risk of being subjected to torture upon his return to Iran, and that the expulsion of the author from the Netherlands to Iran would not violate article 3 of the Convention.

The complainant's comments on the State party's observations

5.1 In his comments on the State party's observations, dated 2 January 2003, the complainant states that neither of his applications was reviewed by the Advisory Committee referred to in the State party's observations. To him, the tone of the Government's 2001 country report on Iran was not similar to those of previous years, but was in fact very negative. He rejects the relevance of the State party not having any record of recent convictions of Fedayeen members, and submits that it should not be concluded from this that those involved in Fedayeen activities do not risk serious consequences. He states that the activities of the group are illegal in Iran, and are therefore difficult to detect and prosecute.

5.2 The complainant reiterates that he did experience problems between 1985 and 1994, and that this constitutes evidence that the Iranian authorities continue to view him with suspicion.

5.3 The complainant's response is accompanied by a letter of support from Amnesty International. This sets out details about the Iranian penal code, the consequence of carrying out activities for banned opposition organizations, and details of the alleged deficiencies in the administration of justice in Iran. It cites examples of executions and torture of members of opposition political movements in Iran in recent years, although no recent cases of Fedayeen members being subjected to this treatment. The letter emphasizes that the complainant's release from prison in 1985 was conditional on him not engaging in further political activity, and that he was told he would receive the death penalty if he did not comply. It further states that the Iranian documents tendered by the complainant, and which were not considered authentic by the State party, were reviewed by an expert on Iranian legal documents, who attested to their authenticity. It also contends that the complainant's political activities in both Iran and the Netherlands have been significant, and that in the Netherlands his name has appeared in domestic media on several occasions; the complainant should not be expected to prove that his activities in the Netherlands are known to the Iranian authorities.

The State party's additional observations

6.1 By note dated 14 April 2003 the State party provided the Committee with additional observations. It states that there is no evidence that the complainant faces a personal risk of torture if returned to Iran, and that his arguments are based on mere speculation and suspicion. It reiterates that, based on the evidence, the complainant did not play a leading role in the Fedayeen-e-Khalg, and that he did not experience significant difficulties in Iran after 1985. It recalls that the complainant's proceedings before the Dutch immigration and judicial authorities have lasted seven years, and that the courts twice upheld the lawfulness of the relevant authority's actions.

6.2 The State party refers to the Committee's case law in communication No. 204/2002, *H.K.H. v. Sweden*, 28 November 2002, where the Committee noted that, in order for a violation of article 3 of the Convention to occur, "additional grounds must be adduced to show that the individual concerned would be personally at risk".

6.3 In relation to the authenticity of the Iranian documents, reviewed by an expert on the complainant's behalf, the State party notes that the documents cited by the expert bore different dates to those tendered by the complainant and that the name of the person to whom the documents referred had been deleted. It also submits that it took into account the general situation in Iran in considering what personal risk might be run by the author upon his return to Iran.

Issues before the Committee

7.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The

Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being considered under another procedure of international investigation or settlement. The Committee notes that the State party has not raised any objections to the admissibility of the communication. The Committee finds therefore that no obstacles to the admissibility of the communication exist and proceeds with the consideration of the merits of the communication.

7.2 The Committee must determine whether the forced return of the complainant to Iran would violate the State party's obligations under article 3, paragraph 1, of the Convention not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subject to torture. In reaching its conclusion, the Committee must take into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim is to establish whether the individual concerned would be at personal risk of torture in the country to which he or she would be returned. In accordance with the Committee's jurisprudence, the existence of a consistent pattern of gross, flagrant or mass violation of human rights in a country does not of itself constitute sufficient grounds for determining whether the person in question would be at risk of being subject to torture upon return to that country. Nor does the absence of such a situation mean that a person cannot be considered in danger of being subjected to torture.

7.3 The Committee recalls its general comment on article 3, which states that the Committee is to assess whether there are "substantial grounds for believing that the author would be in danger of torture" if returned, and that the risk of torture "must be assessed on grounds that go beyond mere theory or suspicion". The risk need not be "highly probable", but it must be "personal and present".[c] In this regard, in previous decisions, the Committee has determined that the risk of torture must be "foreseeable, real and personal".[d]

7.4 In assessing the risk of torture in the present case, the Committee notes that the complainant claims to have been tortured and imprisoned previously by the Iranian authorities, because of his involvement with the Fedayeen Khalg-Iran. This is not contested by the State party. However, the alleged acts of torture occurred in 1983, some 20 years ago. The Committee notes that, in accordance with its general comment on article 3, information which is considered pertinent to risk of torture includes whether the complainant has been tortured in the past, and if so, whether this was in the *recent* past.[e] This cannot be said to be the case in the author's complaint.

7.5 The Committee's general comment also directs the inquiry at whether the author of the communication has engaged in any political or other activity within or outside the State concerned which appear to make him or her "particularly vulnerable" to the risk of torture.[f] In the current case, the complainant contends that he signed a form upon his release, to the effect that he would not engage in further political activities, and that he was harassed by the authorities after his release. He claims that, despite this, he did continue to engage in political activities in Iran, that he had good reason to flee Iran in 1994, and that he has continued his political activities in the Netherlands, of which the Iranian authorities might be aware. The complainant further alleges that he submitted to the authorities Iranian documents, issued by the Revolutionary Prosecutor's Office, which attest to the Iranian authorities' interest in him and the dangers confronting him in Iran.

7.6 The Committee notes that the complainant's arguments, and his evidence to support them, have all been considered by the State party's courts. The Committee recalls its jurisprudence to the effect that it is not an appellate, quasi-judicial or administrative body. Consistent with its general comment, whilst the Committee has the power of free assessment of the facts arising in the circumstances of each case, it must give considerable weight to findings of fact made by the organs of the State party. In this case, the Committee cannot determine that the State party's review of the complainant's case was deficient in this respect. On the basis of the above, the Committee considers that the complainant has not substantiated that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to Iran.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to Iran would not constitute a breach of article 3 of the Convention.

Notes

[a] The State party refers to the Committee's jurisprudence in complaint No. 91/1997, *A. v. The Netherlands*, 13 November 1998, and in complaint No. 94/1997, *K.N. v. Switzerland*, 20 May 1998.

[b] The State party refers to the views of the Committee concerning complaint No. 28/1995, *E.A. v. Switzerland*, 10 November 1997, and to the Committee's general comment on the implementation of article 3.

[c] General comment No. 1 (1996).

[d] Views of the Committee on Communication No. 204/2002, *H.K.H. v. Sweden*, 28 November 2002.

[e] Paragraph 8 (b).

[f] Paragraph 8 (e).

Communication No. 209/2002

Submitted by: M.O. (represented by counsel, Ms. Birte Falkesgaard-Larsen)

Alleged victim: The complainant

State party: Denmark

Date of complaint: 24 May 2002

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 November 2003,

Having concluded its consideration of complaint No. 209/2002, submitted to the Committee against Torture by Mr. M.O. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. Milo Otman, an Algerian national, currently residing in Denmark and awaiting his deportation to Algeria. He claims that his forcible return to Algeria would constitute a violation by Denmark of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.[a]

1.2 On 5 June 2002 the Committee transmitted the complaint to the State party. On 7 March 2003, pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, and following a belated request by counsel on 7 February 2003, the State party was requested not to expel the complainant to Algeria, pending consideration of his case by the Committee.

Facts as submitted by the complainant

2.1 The complainant served in the Algerian army between approximately 1991 and 1998, where he served as a corporal in a weapons store. He claims that in 1994, he was contacted by representatives of the Groupe Islamique Algerien (GIA), who asked him to work for them. He refused. In 1994, for reasons not specified, he was sent to a military prison. There is no indication as to whether the complainant was tried or convicted, or of precisely when he was released from prison.

2.2 The complainant claims that in 1996, the authorities learned of the GIA's previous contact with him, and that in 1998 he was again arrested and sent to prison, on suspicion of having supplied the GIA with weapons, ammunition and food. He was allegedly interrogated and tortured by the Algerian security forces, and, unable to bear the torture, admitted to having worked for the GIA. He claims, amongst other things, that he was kicked forcefully in the genitals, that electric shocks were applied to his genitals, shoulders, hands and feet, and that he was threatened with reprisals against his mother if he did not cooperate. He contends that his physical condition became so critical that he had to be transferred to a military hospital, from which he managed to escape. As he was still a member of the armed forces at the time of his escape, this made him a deserter.

2.3 The complainant arrived in Denmark in 1999, and applied for asylum with the Danish Immigration Service (DIS) on 28 December 1999. His application was rejected on 2 March 2001, and on 21 August 2001, the Refugee Review Board (Review Board) upheld the DIS's decision. The Review Board found that the complainant's testimony about his reasons for seeking asylum was unreliable, and that there were discrepancies in his account of events. It found insufficient evidence to establish that the complainant had been tortured in Algeria. The Review Board noted a report prepared by Amnesty International, which found no signs of mental trauma, although marks on the complainant's body were consistent with some of the types of torture described. The Review Board concluded that the evidence did not justify a decision to grant him asylum.

2.4 The complainant subsequently underwent a psychological examination, which concluded that he suffered from post-traumatic stress disorder and displayed the signs of dissociation often seen in a person who had been subjected to torture. The report noted that the complainant would cease participating in conversation when emotional topics were raised, and that he experienced flashbacks. It noted that the complainant was not able to concentrate on certain questions, because of his fear of being tortured again, and that he found it difficult being questioned by men, as his torturers had been men. The report also concluded that his ability to present a story in an interview had been affected by his post-traumatic stress disorder. On 14 September 2002, based on the psychologist's report, he applied to the Refugee Board to reopen his case. The application was refused on 24 January 2003.

2.5 The complainant attributes the inconsistencies in his story to several factors. First, he says that the interpreter provided to him spoke an "eastern" form of Arabic which he did not properly understand. His first language is said to be French. Secondly, he claims that, as demonstrated by the psychologist's report, he suffers from post-traumatic stress disorder, and states that, in telling his story to the Danish authorities, he relived his experiences of torture, which caused him great anxiety. He claims that being kept in detention by the Danish authorities traumatized him and made it much more difficult for him to provide a cogent and consistent account of his experiences. He refers to the psychologist's report, which concluded that his apparent untrustworthiness could be attributable to his psychological dissociation.

2.6 Finally, the complainant refers to the UNHCR country report on Algeria dated 11-12 June 2001, which states that torture is widely practised in Algeria, and that deserters from the army, such as the complainant, face persecution and torture if they are returned to Algeria.

The complaint

3.1 The complainant claims that he would be at risk of being tortured if he were returned to Algeria, and that his return would constitute a violation of article 3 of the Convention. He states that he has previously been subjected to torture in Algeria, and that, given his false confession to having assisted the GIA, together with the general human rights situation in Algeria, he is in danger of being subjected to torture again if returned.

The State party's observations on admissibility and merit

4.1 In its observations dated 24 March 2003, the State party objects to the admissibility of the claim, and makes submissions on the merits of the claim. In relation to admissibility, it submits that the complainant has failed to establish a prima facie case of a violation of article 3,[b] and that his complaint should be declared inadmissible.

4.2 In relation to the merits, the State party contends that the complainant's return to Algeria would not contravene article 3 of the Convention. It recalls that on 16 February 2000 he completed an application form, in Arabic, in which he provided information about his reasons for seeking asylum in Denmark. He was counselled as to the importance of providing all relevant information. He was interviewed by DIS officials on 11 December 2000 with the assistance of an interpreter, whom the complainant said he understood. A report produced from this interview was reviewed together with the complainant. On 2 March 2001 the DIS refused the asylum application, and the complainant filed an appeal with the Review Board. In May 2001, the Review Board agreed to stay proceedings so that Amnesty International could arrange for a medical examination of the applicant. This report was submitted on 20 June 2001 (see paragraph 2.3).

4.3 The Refugee Board rejected the appeal on 21 August 2001. It found that the complainant had not presented his grounds for seeking asylum in a coherent and credible way. He was found to have provided conflicting and fabricated accounts of his departure from Algeria and his treatment by the Algerian authorities, including details relating to his imprisonment, whether or not he had been convicted of any offence, and his military service. This, together with the Amnesty International report, caused the Review Board to dismiss the appeal. There was no evidence before the Board from which it could have been established that the complainant was at risk of persecution if returned to Algeria.

4.4 The State party provides a description of the composition, competence and processes of the Review Board. Decisions of this body are final and not subject to judicial review. This follows from a decision of the Danish Supreme Court in 1997, which noted that the Review Board was an expert body of quasi-judicial character. It reaches its decisions on the basis of an individual assessment of the asylum-seeker, considered in light of the general situation in the country of origin. To obtain asylum, an applicant must have a well-founded fear of persecution, in accordance with the Refugee Convention of 1951, and this must be supported by objective evidence. The Board attaches importance to whether the applicant can provide a credible account of his or her situation. It also studies reports which deal with the human rights situation in relevant countries. Background information is collated from various sources, including governmental, non-governmental and United Nations sources. Further, the Board considers the fact that a person may have been tortured in the past as a relevant but not necessarily decisive consideration in deciding whether to grant asylum.

4.5 The State party submits that the complainant is seeking to have the Committee conduct a review of the relevant evidence supporting his claim for asylum, whereas it is well established that the Committee is not an appellate, quasi-judicial or administrative body. The Review Board has had the benefit of direct contact with the complainant, and of reviewing all of the relevant evidence in detail. It has not found the complainant's evidence to be credible, and finds no objective basis to fear that he will be subjected to torture if returned to Algeria. The State party refers to the Committee's jurisprudence on article 3, which acknowledges that considerable weight should be given to the findings of fact made by government authorities.

4.6 The State party argues that, in relation to a claim under article 3 of the Convention, the burden of proof is on the applicant to present an arguable case. It refers to the Committee's general comment No. 1, which states that for the purposes of assessing whether there are "substantial grounds for believing that a person would be in danger of being subjected to torture", the risk of torture must be "assessed on grounds that go beyond mere theory or supposition", although it does not have to meet the test of being "highly probable". The applicant must establish that he would be in danger of being tortured, and that the danger is "personal and present".

4.7 The State party contends that the above is not born out in the present case. It notes that, according to the Committee's general comment No. 1 and its case law, it is appropriate to take into account the complainant's credibility and any discrepancies in his/her evidence. The State party addresses in some detail the various discrepancies in the complainant's accounts of his experiences. For example, the complainant first stated that he flew to Moscow, then Berlin, and paid some friends to hide him in a freight lorry to Denmark. He later said that, after flying to Russia, he took a ferry first to Germany, and then to Denmark. As to his military service, the complainant stated in his asylum application that he was in the army from 1991 to 1994. However, in his interview with the DIS, he said he was in the army from 1990 to 1998. Further, the complainant first told the Danish authorities that he fled Algeria after being released from imprisonment and returning to the military, but subsequently stated that he fled the country directly from the military hospital. For the State party, such discrepancies cannot be described as minor; they are material discrepancies of fact which the Government is entitled to rely on in assessing credibility.

4.8 The State party adds that at no time did the complainant raise any language difficulties with the authorities. He filled out his application form in Arabic, and could have done so in French if he had indicated such a preference. It also notes that the psychologist's report was taken into account by the Refugee Board in its decision not to reopen the complainant's case, and that it did not add new material or information.

4.9 The State party states that it could not establish that the complainant had been subjected to torture, but that, according to the Committee's case law, even if it had, this would be only one element in considering his case. And in this instance, particularly in view of the complainant's lack of credibility, there was no evidence to suggest that he risked being subjected to torture if returned to Algeria.

The complainant's comments on the State party's observations

5.1 In his comments on the State party's observations, dated 30 May 2003, the complainant challenges the Government's interpretation of the Amnesty International report. He claims that the report, prepared by doctors and not psychologists, found there were no "immediate" signs of mental problems. The Amnesty International test was not directed at assessing his psychological state, but evaluating the physical markings on his body, and these were found to be consistent with the torture he had described. He states that the Review Board was wrong to conclude that the psychologist's report did not contain any new material warranting a reopening of the case; this report is not only new evidence, but the only evidence in relation to his psychological state. He reiterates that the inconsistencies in his accounts are explained by the psychologist's report.

Issues before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being considered under another procedure of international investigation or settlement. The Committee notes that the exhaustion of domestic remedies is not contested by the State party. The State party objects to admissibility on the grounds that the complainant has not established a prima facie case of a violation of article 3, but the Committee is of the view that the author has provided sufficient information in substantiation of his claim to consider his complaint on the merits. As the Committee sees no further obstacles to the admissibility of the communication, it declares the complaint admissible and proceeds to a consideration of the merits.

6.2 The Committee must determine whether the forced return of the complainant to Algeria would violate the State party's obligations under article 3, paragraph 1, of the Convention not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In reaching its conclusion, the Committee must take into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim is to establish whether the individual concerned would be at personal risk of torture in the country to which he or she would be returned. In accordance with the Committee's jurisprudence, the existence of a consistent pattern of gross, flagrant or mass violation of human rights in a country does not of itself constitute sufficient grounds for determining whether the person in question would be at risk of being subjected to torture upon return to that country. Nor does the absence of such a situation mean that a person cannot be considered at risk of being subjected to torture.

6.3 The Committee recalls its general comment on article 3, which states that the Committee must assess whether there are "substantial grounds for believing that the author would be in danger of torture" if returned, and that the risk of torture "must be assessed on grounds that go beyond mere theory or suspicion". The risk involved need not be "highly probable", but it must be "personal and present". In this regard, in previous decisions, the Committee has consistently determined that the risk of torture must be "foreseeable, real and personal".

6.4 In assessing the risk of torture in the present case, the Committee notes that the complainant claims to have been tortured and imprisoned previously by the Algerian authorities. The findings of the medical examination carried out on him are consistent with these claims, although they do not discount other possible causes for the complainant's injuries. In relation to the psychologist's report, the Committee notes that the complainant was found to suffer from post-traumatic stress disorder, and that this was said to be consistent with his claim of having been subjected to torture in the past. The report also found that past torture could account for the discrepancies in the complainant's story. The Committee notes the complainant's submission that this report constitutes the only formal psychological evidence about his mental condition.

It also notes that this report was considered by the Danish authorities in connection with the complainant's application to have his case reopened, and was found not to contain new information.

6.5 The relevant evidence in the case was fully considered by the Danish authorities. And, consistent with the Committee's case law, due weight must be accorded to findings of fact made by government authorities. In the present case, the complainant's account of his experiences to the Danish authorities contained numerous discrepancies. The Danish authorities made conclusions about the complainant's credibility which, in the Committee's view, were reasonable and by no reckoning arbitrary. In this regard, the Committee notes paragraph 8 of its general comment No. 1, pursuant to which questions about the credibility of a complainant, and the presence of relevant factual inconsistencies in his claim, are pertinent to the Committee's deliberations as to whether the complainant would be in danger of being tortured upon return.

6.6 The complainant's initial submission and his subsequent explanations of his inconsistencies noted by the State party in its submission do not permit the Committee to make any informed decision on the likelihood of him being subjected to torture on his return to Algeria. In light of the foregoing, the Committee finds that the complainant has not established that he would face a foreseeable, real and personal risk of being tortured, within the meaning of article 3 of the Convention.

7.1 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to Algeria would not constitute a breach of article 3 of the Convention.

Notes

[a] By letter dated 21 November 2002, the complainant's initial counsel advised that he no longer represented him. The complainant's present counsel issued an appearance by letter dated 26 November 2002, and provided further details of the complainant's allegations. New counsel is properly authorized.

[b] Reference is made to the Committee's general comment on the implementation of article 3.

Communication No. 210/2002*

Submitted by: V.R.

Alleged victim: The complainant

State party: Denmark

Date of complaint: 13 May 2002 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 17 November 2003,

Having concluded its consideration of complaint No. 210/2002, submitted to the Committee against Torture by Mr. V.R. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1. The complainant is Mr. V.R., a citizen of the Russian Federation residing in Denmark at the time of the submission of the complaint. He claims that his forcible return to the Russian Federation would constitute a violation of article 3 of the Convention against Torture by Denmark. He is not represented by counsel.

The facts as submitted

2.1 On 6 November 1992, the complainant and his wife entered Denmark and immediately applied for asylum. On 5 November 1993, the Danish Refugee Board upheld a previous decision of the Directorate of Immigration according to which the complainant and his family had to leave Denmark by 20 November 1993. The complainant and his family left Denmark and returned to Russia.[a]

2.2 On 26 July 1994, and upon returning to the Russian Federation from Denmark, the complainant alleges that he was arrested and charged with unlawfully crossing the border, participating in subversive offences and defaming persons representing authority. He alleges that he was detained by the authorities from 26 July 1994 to 20 January 1998 and was subjected to various forms of torture, including having gas passed up through his windpipe until he vomited and forcing him to swallow soup straight from a bowl with his hands tied behind his back. In January 1996, he alleges to have been sentenced to three and a half years' imprisonment for having unlawfully crossed the border, and having participated in subversive offences. Upon release, he became a member of the Citizens' Union where he carried out activities on civil rights issues. As a result of these activities, he alleges to have come into conflict with the authorities, which again deprived him of his liberty and subjected him to torture.

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* Pursuant to rule 104 of the Committee's rules of procedure, Mr. Yakovlev did not participate in the examination of this complaint.

2.3 On 15 July 1999, the complainant and his wife and child entered Denmark for the second time; the next day, they applied for asylum. On 19 December 2001, the Danish Immigration Service refused asylum. On 21 March 2002, the Refugee Board upheld this decision and the complainant and his family were asked to leave Denmark. The complainant requested the Refugee Board to reopen the case, as he claimed that an opinion of the Department of Forensic Medicine of 21 December 2000 ("opinion of 21 December 2000") was defective. He also stated that his wife had been subjected to torture and that she had had flashbacks during the Board hearing, as one of the Board members reminded her of a Russian police officer. On 27 June 2002, the Refugee Board considered his application but refused to reopen the asylum case.

The complaint

3.1 The complainant claims that as there is a real risk that he will be subjected to torture on return to the Russian Federation, his forced return would constitute a violation of article 3 of the Convention. He supports his fear of torture with the allegation that he was previously tortured, was an active member of the Citizens' Union, and was convicted of a criminal offence.

3.2 According to the complainant, the opinion of 21 December 2000 on which the Refugee Board largely based its decision not to grant him asylum was not thorough and was open to interpretation. He claims that this opinion does not deny that he suffers from chronic post-traumatic stress disorder caused by the effects of torture. He also contends that the opinion refers to scars on his body caused by previous acts of torture.

3.3 In addition, he states that even if he does suffer from paranoid psychosis (as stated in the same opinion) a return to the Russian Federation would involve detention in prison, where he claims it is the ordinary practice of the authorities to torture detainees, or detention in a closed psychiatric institution.

The State party's observations on admissibility and merits and the petitioners comments thereon

4.1 By note verbale, of 12 September 2002, the State party provided its submission on the admissibility and merits of the communication. It submits that the complainant has failed to establish a prima facie case, for purposes of admissibility. If the Committee does not dismiss the communication for that reason, the State party submits that no violation of the provisions of the Convention occurred in relation to the merits of the case.

4.2 The State party describes the organization and decision-making process of the Refugee Board in detail and submits, inter alia, that, as is normally the case, the complainant was assigned an attorney who had an opportunity as well as the complainant to study the files of the case and the background material before the meeting of the Board. The hearing was also attended by an interpreter and a representative of the Danish Immigration Service.

4.3 With respect to the application of article 3 of the Convention to the merits of the case, the State party underlines that the burden to present an arguable case is on the complainant, in accordance with paragraph 5 of the general comment on the implementation of article 3 adopted by the Committee on 21 November 1997. By reference to this general comment, the State party points out that the Committee is not an appellate, quasi-judicial or administrative body but rather a monitoring body. The present communication does not contain any information that had not already been examined extensively by the Danish Immigration Service and the Refugee Board. The State party submits that, in its view, the complainant is attempting to use the Committee as an appellate body in order to obtain a new assessment of a claim already thoroughly considered by Danish immigration authorities.

4.4 As to whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to the Russian Federation, the State party refers to the decision of the Refugee Board in its entirety. In the decision of the Refugee Board of 21 March 2002, it was held that the complainant and his wife had "not rendered probable in a convincing and credible way that after their return to Russia in 1994 and until their departure in 1999 they had been subjected to asylum-relevant outrages, or that upon a return they would be at such risk thereof that there was a basis for granting them residence permits under section 7 of the Aliens Act".

4.5 The State party submits that the Refugee Board's assessment corresponds to the practice of the Committee in considering past torture as one of the elements to be taken into account when considering whether a complainant would risk being tortured if returned to his country of origin. In this regard, the Board attached decisive importance to the opinion of 21 December 2000, stating, inter alia, that no obvious physical or mental effects of torture as stated by the complainant were found at his examination. The Board therefore set aside the complainant's statement of having been subjected to torture.

4.6 A translation of the opinion of 21 December 2000 has not been provided but is interpreted by the State party.[9] During the examination, the author claimed to have been subjected to various forms of torture. The examination concluded that there were no signs of fresh violence. As signs of older violence, were found a small non-specific scar on his back and on his left foot. Moreover, there were depressions on the outer side of his front teeth. It is stated that these changes might be due to corrosive burns, but were not otherwise specific. The author was found to suffer from a substantial personality change, which could be seen as a chronic development of a post-traumatic stress disorder, but most likely the disorder should be diagnosed as a paranoid psychosis (mental disorder with delusions of persecution). By way of conclusion, the Department of Forensic Medicine stated that no obvious physical or mental effects of torture as stated in the case had thus been found directly.

4.7 In setting aside the statement that the author had been subjected to torture, the Board found that this decisively weakened the author's case. It further noted that the statement of the author's wife was less convincing, and that despite repeated questioning - she had only been able to explain about the reason for the final decision on the departure in general terms. The Board concluded that it could not accept either the author's statement or his wife's statement about their asylum motive. Although it did not entirely reject their statements to the effect that the author had carried out activities for the Citizens Union concerning civil rights issues, that he had certain conflicts with the authorities and that a search had been carried out of their home, upon an overall assessment of the information provided it found that the author and his wife had not rendered probable in a convincing and credible way that after their return in 1994 and until their departure in 1999 they were subjected to asylum-related outrages, or that upon their return they will be at such risk thereof.

4.8 The State party refers to the claim that the complainant's application for asylum was refused even though the opinion of 21 December 2000 does not exclude the possibility that the complainant suffers from post-traumatic stress disorder. The State party argues (as is set out in the preceding paragraph) that upon examination the complainant was found to suffer from a substantial personality change which could be the result of post-traumatic stress disorder, but is most likely diagnosed as paranoid psychosis. Thus, the State party maintains that there is no medical information proving that the complainant was subjected to torture.

4.9 According to the State party, in requesting the Refugee Board to reopen his case, the complainant stated, inter alia, that he disagreed with the opinion of 21 December 2000, as he claimed that his mental condition is attributable to the effects of torture, and that the examination made by doctors prior to preparing the opinion was not sufficiently thorough. The State party notes that in refusing to reopen his case on 27 June 2002, the Refugee Board found that no new information had come to light which would provide a basis for assuming that the opinion of 21 December 2000 was defective.[c] In the State party's view, the simple fact that the complainant disagrees with the conclusion of the opinion does not alter this.

4.10 In setting aside the complainant's allegations of having been previously tortured, the Refugee Board did not consider the complainant's statement credible or substantiated. The same is said to be true of the complainant's wife's statement, in respect of which the Board found that despite repeated questioning she was only able to explain about the reason for the final decision on the departure in general terms. The State party also refers to the fact that several instances concerning statements of the complainant and his wife were not very convincing. By way of example, the State party refers to a memorandum of 26 November 2001 from the Ministry of Foreign Affairs, which is mentioned in the Refugee Board decision. The Ministry had been requested to comment on the authenticity of the transcript of a judgement dated January 1996, allegedly against the complainant. Although it could not establish whether the judgement was authentic, it found that certain issues in the transcript were extraordinary. There was no reference to the underlying criminal provisions, the punishment imposed was meted out in parts of a year as opposed to whole years, which is unusual, and the punishment imposed was imprisonment and not work camp, which would have been normal in a case like this one. The State party also refers to the complainant's allegation, in the context of his request to the Board to reconsider his case, that his wife had been subjected to torture and that she had flashbacks during the Board hearing as one of the Board members reminded her of a Russian police officer. The Board noted that the complainant's wife did not appear to the board as a person "in shock" during the hearing and that this argument could not lead to a reversal of its decision.

4.11 The State party refers to the Refugee Board's statement that it would not entirely reject the complainant's statement to the effect that the complainant had carried out activities for the Citizens' Union, that he had certain conflicts with the authorities, and that his home had been searched. However, the State party argues that it follows from the practice of the Committee that "a risk of being detained as such is not sufficient to trigger the protection of article 3 of the Convention".[d]

4.12 In addition, the State party argues that the complainant has not substantiated that he is wanted by the authorities in his country of origin and risks being arrested if he were to return.[e]

4.13 In conclusion, the State party emphasizes that the Russian Federation ratified the Convention on 3 March 1987 and recognized the competence of the Committee against Torture to receive and process individual communications under article 22 of the Convention. Thus, it argues, the complainant does not risk return to a State which is not a State party to the Convention and where the complainant does not have the possibility of applying to the Committee for protection.[f]

5.1 In November 2002, the complainant commented on the State party's submission. He reiterated his previous claims and contested the findings of the Refugee Board. He provided detailed arguments to demonstrate the authenticity of the January 1996 judgement against him and transmitted medical opinions to demonstrate that his wife is unstable. He claimed that the Refugee Board ignored her allegation that she was raped while in police detention in 1995.

5.2 The complainant does not provide details of his wife's case. His wife gave details of events after their return to the Russian Federation in 1994 in her asylum application of 16 September 1999 and 20 September 1999, and in a further interview of 9 November 1999. She alleged that after their return, she had been detained for four days during which she was separated from her child. After returning to her home she was interrogated again and given a blow to the head. She was subsequently charged with having left the Russian Federation without permission and was given a suspended sentence. In her interview on 9 November, she alleged that until 1995 she was summoned every week to the police station to be interrogated. At this interview in November 1999, she also alleged that in November 1995, she had been raped by more than one policeman. In January 1999, and during a search of their house, both her husband and son were beaten.

5.3 The complainant submits that if the State party does not entirely reject his statement that he carried out activities for the Citizens' Union, that he had certain conflicts with the authorities, and that his home had been searched, it must be aware that it is probable that he was subjected to torture. In this regard, he attaches information from various non-governmental organizations referring to the torture inflicted on human rights activists and detainees in the Russian Federation. He also claims that the techniques employed by the torturers often leave few or no physical traces. Finally, he forwards a copy of a medical opinion from a clinical psychologist in Norway, dated 25 November 2002, in which he is described as a "torture victim".

5.4 By letter of 12 August 2003, the complainant informed the Committee that although he and his family had spent some time in Norway since the registration of his complaint by the Committee, for fear of being deported by the Danish authorities, they have since returned to Denmark where they are staying with friends (no dates are provided). He also attaches another letter, dated 18 April 2000, from a psychologist stating that the complainant has "severe symptoms of P.T.S.D. (sleeping disorder, stress, psycho-traumatic suffering) as a result of imprisonment and torture in his native country".

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that the exhaustion of domestic remedies is not contested by the State party. While the State party alleges that the complainant has failed to establish a prima facie case for the purpose of admissibility, the Committee notes that it has not clarified the reasons on which it makes this assessment. Indeed, the Committee cannot find any reason under rule 107 of its rules of procedure to consider this communication inadmissible.

6.2 The Committee must decide whether the forced return of the petitioner to the Russian Federation would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In order to reach its conclusion, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.3 The Committee notes that the complainant's main argument relates to the way in which the Refugee Board reached its decision not to grant him asylum, in particular its interpretation of the medical opinion of 21 December 2000 addressing the question of whether the complainant had been subjected to torture. The Committee is not persuaded by the complainant's arguments that he faces a real and personal risk of torture if returned to the Russian Federation at the present time.

6.4 Consequently, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainant to the Russian Federation would not constitute a breach of article 3 of the Convention.

Notes

[a] The exact date of their return is not provided.

[b] On 5 November 2003, the State party provided a copy of the decision in English for the Committee's consideration.

[c] It also notes the Board's reference to the fact that the complainant can complain of this opinion in accordance with existing rules and states that the complainant had previously complained of a psychiatric report procured from the Clinic of Forensic Psychiatry for the purpose of the opinion of the Department of Forensic Medicine. The clinic responded that it could not comply with the complainant's request to alter the opinion as the complainant and the clinic disagree on the conclusion.

[d] The State party refers to *I.O.A. v. Sweden*, complaint No. 65/1997, Views of 19 May 1998.

[e] It refers to *K.N. v. Switzerland*, complaint No. 94/1997, Views of 19 May 1998.

[f] *Tahir Hussain Khan v. Canada*, complaint No. 15/1994, Views of 18 November 1994; *Balabou Mutombo v. Switzerland*, complaint No. 13/1993, Views of 27 April 1994; and *S.C. v. Denmark*, complaint No. 143/1999, Views of 3 September 2000.

Communication No. 213/2002

Submitted by: Mr. E.J.V.M.

Alleged victim: The complainant

State party: Sweden

Date of complaint: 17 May 2002 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2003,

Having concluded its consideration of complaint No. 213/2002, submitted to the Committee against Torture by Mr. E.J.V.M. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is E.J.V.M., a Costa Rican citizen, born in 1956, currently residing clandestinely in Sweden, following the rejection by Sweden on 19 February 2002 of his application for asylum. He claims that his deportation to Costa Rica would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (henceforth referred to as "the Convention"). He is not represented by counsel.

1.2 The State party ratified the Convention on 8 January 1986, when it also made the declaration under article 22 of the Convention. The Convention entered into force for the State party on 26 June 1987.

1.3 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 1 July 2002.

The facts as submitted by the complainant

2.1 The complainant joined the Youth Section of the Popular Vanguard Party (Communist) of Costa Rica in 1975, when he was a drama student at the University of Costa Rica. As an active member of Costa Rica's Vanguard Youth (JVC), he participated in various student political and cultural activities.

2.2 The complainant was arrested for the first time in 1975 during a student political meeting. Along with the other participants he was taken to a prison in San Juan de Tibás, where he alleges that he was physically and mentally tortured - insulted, threatened, kicked, his hair pulled, beaten on the ribs and spat on.

2.3 The complainant managed to escape from prison and made for the province of Limón. He alleges that he was arrested several times and imprisoned in inhumane conditions, among convicted criminals, in rat-infested premises, with neither food nor a blanket nor anywhere to sleep. He alleges that he was arrested and released on numerous occasions, being allowed to leave and then being arrested again after 50 metres. He was finally able to escape and return to San José.

2.4 In San José, the complainant again became involved in political activities at university. He alleges that he was arrested several times; while in detention he received death threats and was beaten and burned with cigarettes. He says that on one occasion he was taken to the General Detention Facility of the Ministry of Public Security, where he was subjected to numerous types of physical and mental ill-treatment, including being severely kicked and beaten, immersed in cold water in the early morning and forced to perform sexual acts with his captors.

2.5 The complainant claims that, because of his Communist affiliations, he was prevented from working in the National Theatre Company and suspended from his acting classes. He also alleges that he was publicly attacked because he was bisexual.

2.6 The complainant says that he fled to Venezuela, where he lived for two years before returning to Costa Rica in 1982. On his return he set up an underground theatre from which *Radio Venceremos*, the official medium of the Frente Farabundo Martí para la Liberación Nacional (FMLN), used to make clandestine broadcasts. He alleges that in 1985 security forces raided his house, beat him up and took him to San Juan de Tibás prison, where he was physically and mentally tortured.

2.7 The complainant alleges that one night in the early 1990s, he was again detained, beaten and forced to perform fellatio on one of the guards while another insulted him. A third guard then started kicking him, causing such injuries to his face and body that he had to be taken to a hospital: he was threatened with death if he told what had happened. On his release, he reported the facts to the prosecutor's office in San Pedro de Montes de Oca and to the Public Prosecutor's Office in San José. He claims that his complaint was not examined.

2.8 Between 1992 and 1993, as a result of his participation in the defence of the rights of Limón peasants who were under pressure to sell their land cheaply, the complainant alleges that he was arrested in an operation coordinated by the national police and paramilitary groups opposed to the peasants. He says that he was taken to Limón prison, put in a cell swimming in urine and excrement, beaten and drenched with cold water. On his release, he found that his house had been raided and his personal belongings destroyed.

2.9 The complainant claims that between 1994 and 1997 he was detained on more than 30 occasions and taken to court four times, accused, inter alia, of illegal possession of firearms, manufacture of explosives, occupation of land, aggravated threats and attempted homicide.

2.10 He also says that his life and that of his partner, P.A.M., a female to male transsexual, with whom he shared his political activities, was in danger. He says that their house was shot at on several occasions and that although they asked for police protection their requests were ignored. He asserts that they had to install a metal stockade in the living room of their house for protection.

2.11 The complainant alleges that in 1995 there was an attempt to murder him: he received a bullet wound to his left hand from an individual to whom a uniformed police officer had given a gun.

2.12 On 17 May 1997, the complainant left Costa Rica for good. With P.A.M. he made for Canada, where they applied for asylum. The Canadian Center for Victims of Torture took up their case and gave them legal, linguistic, health care and psychiatric support. The Canadian authorities, however, refused their application for asylum.

2.13 On 12 July 2000, the complainant and P.A.M. fled to Sweden, where they immediately applied for asylum. The Swedish authorities refused their application. The complainant says that he is currently having to live clandestinely in Sweden in order not to be deported, since all domestic remedies have been exhausted in the State party.

The complaint

3.1 The complainant argues that his deportation would be a violation by Sweden of article 3 of the Convention, since he is in danger of being subjected to further torture in Costa Rica.

3.2 The complainant claims that the decision by the Swedish authorities was a mechanical one, that it was biased, that the officials showed a lack of humanitarian interest and that they considered only some parts of his statement and not the whole. He further argues that the procedure was not objective since it took place in Swedish with only sporadic assistance from untrained interpreters, which prevented him from understanding and responding to the decisions taken concerning him in his own language.

The State party's observations on admissibility and the merits

4.1 In a written submission dated 15 October 2002, the State party set out its observations on the admissibility and the merits of the complaint. On admissibility, and with reference to the requirement set out in article 22, paragraph 5 (a), of the Convention, the State party expresses its confidence that the Committee will ascertain whether the complaint has not been and is not being examined under another procedure of international investigation or settlement.

4.2 On the admissibility requirement set out in article 22, paragraph 5 (b), of the Convention, the State party acknowledges that all domestic remedies have been exhausted in this case. The Swedish Migration Board held a first interview with the complainant on the day after his arrival in Sweden; the second interview took place on 26 July 2000. On 26 September 2000, the Migration Board rejected the complainant's application for asylum and ordered that he should be deported to his country of origin. The complainant appealed, but the Aliens Appeals Board rejected the appeal on 19 February 2002.

4.3 The State party contends, however, that the complaint should be declared inadmissible in accordance with article 22, paragraph 2, of the Convention, since it lacks the minimum substantiation that would render it compatible with article 22 of the Convention. As an example, the State party cites the case of *Y. v. Switzerland*.[a]

4.4 Should the Committee declare the complaint to be admissible, the State party asserts that, as regards the merits of the complaint, returning the complainant to Costa Rica would not constitute a violation of article 3 of the Convention. It points out that, in accordance with the Committee's jurisprudence, application of article 3 of the Convention must take account of (a) the general human rights situation in the country, and (b) the danger personally faced by the complainant of being subjected to torture in the country to which he is returned.

4.5 On the general human rights situation in Costa Rica, the State party asserts that there is no consistent pattern of gross, flagrant or mass violations of human rights. It bases its assertion on reports on the human rights situation in the country, on the Committee's concluding observations on Costa Rica's initial report of 2001, on the fact that consensual homosexual relationships between adults are legal in that country and on the fact that Costa Rica has ratified various human rights instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The State party asserts that the torture alleged by the complainant took place some time ago and that the human rights situation in Costa Rica has considerably improved since.

4.6 As to whether the complainant is personally in danger of being subjected to torture, the State party asserts that the circumstances he invokes are not sufficient evidence that he runs a foreseeable, real and personal risk of being tortured in Costa Rica. The State party refers in this connection to the Committee's jurisprudence on the interpretation of article 3 of the Convention.[b]

4.7 The State party adds that the complainant's credibility is of vital importance in taking a decision on the application for asylum, and that the national authorities conducting the interviews are naturally in an excellent position to assess that credibility. The State stresses that the complainant's statements contain various discrepancies and grey areas which diminish the credibility of his complaint.

4.8 First, the State party contends that the complainant's statements to the Swedish Migration Board and the Swedish Aliens Appeals Board and the complaint submitted to the Committee referring to the dates on which he was arrested and tortured while living in Costa Rica are not consistent. The complainant declared to the Swedish Migration Board and to the Canadian authorities that an organization called Acaina had filed suit against him 33 times, while he told the Swedish Aliens Appeals Board and reported in his complaint to the Committee that he had been arrested more than 30 times. Lastly, as to the circumstances of his being shot in 1995, he declared to the Swedish Migration Board and to the Canadian authorities that an individual had threatened to shoot P.A.M. but that he himself had intervened and been hit as a result. Before the Swedish Aliens Appeals Board, however, and in the complaint to the Committee, he stated that an individual had attempted to murder him and that it was then that he had been shot.

4.9 On the reasons why the complainant contends that he is in danger of being tortured if he is returned to Costa Rica, the State party points out that his participation in peasant disputes over land took place quite some time ago. It quotes human rights reports which show that the situation has improved since 1999.

4.10 The State party further argues that, according to the complainant himself, the most serious incident, namely, when he was shot, took place in 1995. The State party points out, however, that the complainant left Costa Rica only in May 1997. He left the country legally, and apparently without difficulty. This would suggest that he had no need of urgent protection even in 1997.

4.11 The State party asserts that the complainant has not demonstrated the risk of persecution by the Costa Rican authorities, and that in any case, if it were considered that the complainant risks persecution today, it would be from organizations with which he has been in conflict for various reasons. The State party asserts, however, that persecution of this nature does not fall within the purview of the Convention.[c] It adds that there is nothing to indicate that Costa Rica is unable to furnish adequate protection to the complainant should he be the object of such persecution. Costa Rica has furthermore ratified the Convention and made the declaration under article 22; the complainant would therefore be able to enjoy the protection provided by the Convention in his country of origin.

Comments by the complainant concerning the State party's arguments

5.1 In a written submission dated 25 November 2002, the complainant commented on the State party's observations, referring to facts not appearing in the initial complaint, and putting forward new allegations which similarly did not appear in his initial submission. On the issue of the general situation of human rights in Costa Rica, the complainant quotes a press release issued by the Popular Vanguard Party of Costa Rica on 18 October 2002 denouncing acts of political persecution of its leaders by agents of the State. He also quotes a document written by himself, which can be found on his web site, about the human rights situation in Costa Rica.

5.2 The complainant quotes the opinion of the Centro de Investigación y Promoción para América Central de Derechos Humanos (CIPAC/DDHH) (Human Rights Research and Promotion Centre for Central America), on the discrimination to which homosexuals in Costa Rica are subject, the violence against them and the fact that they cannot contract same-sex marriages.

5.3 Referring to the personal risk of torture he would incur if he were returned to Costa Rica, the complainant bases his fears on the alleged lack of effective means of protection on the part of government institutions. Those same institutions did not protect him before or after the torture to which he was subjected, and his complaints to the courts about members of the police force were not examined.

5.4 On the issue of the circumstances in which the complainant was shot in 1995, he repeats that it was an attempted murder, without commenting on the contradiction alleged by the State party.

5.5 On the issue of the circumstances under which he left Costa Rica, the complainant says that he remained in the country until 1997 in order to exhaust all domestic remedies. He reiterates that he was in danger at the time and for that purpose had installed a metal stockade in his house and that he moved from region to region within the country in order to protect himself.

5.6 As regards the asylum procedure engaged in Sweden, the complainant contends that at the hearing of 26 July 2000 he was not allowed to hand over the documents he wished to submit since they were in Spanish, that the immigration official and the defence lawyer assigned to him treated him in a rude and hostile way, that the hearing was "a put-up job and manipulated from beginning to end", and that the transcript of his statement by the official was inaccurate and omitted certain facts of which he had informed her. He further claims that in the course of one year and eight months he had access to his lawyer for just 2 hours and 15 minutes. He also contends that the State's refusal to consider his case adequately is an act of discrimination.

5.7 The complainant says that he is currently continuing his political activities from abroad, since he has a web site on which he records complaints; for this reason his safety is still at risk.

Additional submission by the complainant

6. On 23 September 2003, the complainant made an additional submission, containing, inter alia, a psychiatric report dated 14 September 1998 and issued by D.E.P., a Toronto-based psychiatrist, who confirms that the complainant suffers from post-traumatic stress disorder.

Issues and proceedings before the Committee

7.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect, the Committee has ascertained, as it is required to under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that the State party acknowledges that domestic remedies have been exhausted.

7.2 As regards the complainant's additional submission of 23 September 2003, the Committee notes that this submission was lodged after the end of the six-week deadline, stipulated in the Committee's letter of 21 October 2001, in accordance with rule 109, paragraph 6, of the Committee's rules of procedure, in which the complainant was invited to submit his comments on the State party's observations on admissibility and merits of the complaint by 29 November 2002. The Committee thus considers that the fresh arguments raised in the complainant's additional submission of 23 September 2003 were lodged out of time and cannot therefore be considered by the Committee.

7.3 The Committee sees no further obstacles to the admissibility of the complaint and therefore proceeds to a consideration of the merits.

8.1 The Committee has considered the complaint in the light of all information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

8.2 The Committee must decide whether the deportation of the complainant to Costa Rica would violate the State party's obligation under article 3 of the Convention not to expel or return an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must assess whether there are grounds to believe that the complainant would be personally in danger of being subjected to torture on returning to Costa Rica. In weighing up this risk the Committee must take into account all relevant considerations in accordance with article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee recalls, however, that the aim is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent matter of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person may not be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.4 In the present case, the Committee takes note of the State party's observations on the general situation of human rights in Costa Rica and of the fact that Costa Rica has made a declaration under article 22 of the Convention. It further takes note of reports which indicate an improvement in the situation of peasants involved in land disputes. The Committee observes that the information contributed by the complainant to rebut this opinion comes mainly from his own writings.

8.5 The Committee takes note of the discrepancies and grey areas in the complainant's account, as indicated by the State party, which were not clarified by the complainant. It further observes that the complainant has not provided sufficient evidence to corroborate his assertions of having been subjected to torture in Costa Rica.

8.6 The Committee also notes the observations of the State party to the effect that the most serious incident alleged by the complainant took place in 1995, but that the complainant nevertheless did not leave Costa Rica until May 1997. It observes that the complainant's reply is vague in this regard, and that while he contends that the government institutions in Costa Rica have not protected him in the past, he has not provided evidence to corroborate his assertion.

8.7 On the issue of the complainant's alleged difficulties in Costa Rica on account of his bisexuality, the Committee observes that the danger of being subjected to torture in Costa Rica in future is not based on grounds that go beyond mere theory or suspicion. In the Committee's opinion, the reports submitted by the complainant do not demonstrate substantial grounds for believing that he is personally and currently in danger of being tortured if returned to Costa Rica. In the light of the foregoing, the Committee considers that the information furnished by the complainant does not provide substantial grounds for believing that he would personally be in danger of being tortured if returned to Costa Rica.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the complainant has not substantiated his claim that he would be subjected to torture upon his return to Costa Rica, and therefore concludes that the complainant's removal to that country would not constitute a breach by the State party of article 3 of the Convention.

Notes

[a] *Y. v. Switzerland*, complaint No. 18/1994, Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 17 November 1994, para. 4.2.

[b] *S.M.R. and M.M.R. v. Sweden*, complaint No. 103/1998, Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 5 May 1999, paras. 9.7 and 9.4; *S.L. v. Sweden*, complaint No. 150/1999, Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 11 May 2001, para. 6.4.

[c] *G.R.B. v. Sweden*, complaint No. 83/1997, Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 15 May 1998, para. 6.5.

Communication No. 214/2002

Submitted by: M.A.K. (represented by counsel, Mr. Reinhard Marx)

Alleged victim: The complainant

State party: Germany

Date of complaint: 10 September 2002 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 May 2004,

Having considered complaint No. 214/2002, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is M.A.K., a Turkish national of Kurdish origin, born in 1968, currently residing in Germany and awaiting expulsion to Turkey. He claims that his forcible return to Turkey would constitute a violation by the Federal Republic of Germany of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 11 September 2002, the Committee forwarded the complaint to the State party for comments and requested, under rule 108, paragraph 1, of the Committee's rules of procedure, not to extradite the complainant to Turkey while his complaint was under consideration by the Committee. The Committee indicated, however, that this request could be reviewed in the light of observations provided by the State party on the admissibility or on the merits. The State party acceded to this request.

1.3 On 11 November 2002, the State party submitted its observations on the admissibility of the complaint together with a motion asking the Committee to withdraw its request for interim measures, pursuant to rule 108, paragraph 7, of the Committee's rules of procedure. In his comments, dated 23 December 2002, on the State party's observations on admissibility, counsel asked the Committee to maintain its request for interim measures until a final decision on the complaint has been taken. On 4 April 2002, the Committee, through its Rapporteur on new communications and interim measures, decided not to withdraw its request for interim measures.

The facts as submitted by the complainant

2.1 The complainant arrived in Germany in December 1990 and claimed political asylum on 21 January 1991, stating that he had been arrested for a week in 1989 and tortured by the police in Mazgirt because of his objection to the conduct of superiors during military service.

As a PKK sympathizer, he was being persecuted and his life was in danger in Turkey. On 20 August 1991, the Federal Agency for the Recognition of Foreign Refugees (*Bundesamt für die Anerkennung ausländischer Flüchtlinge*) rejected the complainant's application on the basis of inconsistencies in his counts.

2.2 The complainant appealed the decision of the Federal Agency before the Wiesbaden Administrative Court which dismissed the appeal on 7 September 1999. On 17 April 2001, the Higher Administrative Court of Hessen refused leave to appeal from that judgement.

2.3 On 7 December 2001, the City of Hanau issued an expulsion order against the complainant, together with a notification of imminent deportation. The expulsion was based on the fact that the complainant had been sentenced by penal order, dated 16 January 1995, of the District Court of Groß-Gerau to a suspended prison term of four months for participation in a highway blockade organized by PKK sympathizers in March 1994.

2.4 On 17 January 2001, the complainant applied to the Federal Agency to reopen proceedings in his case, arguing that he had been trained by the PKK in a camp in the Netherlands in 1994, with a view to joining the PKK's armed forces in south-east Turkey, a duty from which he had been exempted at his subsequent request. He further claimed that the Turkish authorities knew about his PKK activities and, in particular, his participation in the highway blockade, on the basis of his conviction for joint coercion of road traffic.

2.5 By decision of 6 February 2002, the Federal Agency rejected the application to reopen asylum proceedings, stating that the complainant could have raised these fresh arguments in the initial proceedings, and that his submissions lacked credibility. On 26 February 2002, the complainant appealed this decision before the Frankfurt Administrative Court, where proceedings were still pending in this regard at the time of the initial submission of the complaint.

2.6 The complainant's application for provisional court relief against his deportation to Turkey was rejected by the Frankfurt Administrative Court on 21 March 2002, essentially based on grounds identical to those of the Federal Agency.

2.7 On 16 April 2002, an informational hearing of the complainant was held at the Federal Agency, during which the complainant stated that, prior to his training at the Dutch PKK camp, he had been introduced to the public of the Kurdish Halim-Dener-Festival, celebrated in September 1994 in the Netherlands, as part of a group of 25 "guerrilla candidates". He had not raised the issue during initial asylum proceedings since he feared punishment for PKK membership (the PKK is illegal under German law).

2.8 The complainant's application to reconsider its decision denying provisional court relief was rejected by the Frankfurt Administrative Court on 18 June 2002. The court reiterated that the late submission, as well as various details in the description of his alleged PKK activities, undermined the complainant's credibility. Thus, it was considered questionable whether the PKK would publicly present its guerrilla candidates, knowing that the Turkish secret service observed events such as the Halim-Dener-Festival. Moreover, following political and ideological training in Europe, PKK members were generally obliged to undergo immediate military training in south-east Turkey.

2.9 On 22 July 2002, the complainant lodged a constitutional complaint with the Federal Constitutional Court against the decisions of the Frankfurt Administrative Court of 21 March and 18 June 2002, claiming violations of his constitutionally protected rights to life and physical integrity, equality before the law as well as his right to be heard before the courts. In addition, he filed an urgent application for an interim decision granting protection from deportation for the duration of the proceedings before the Federal Constitutional Court. By decision of 30 August 2002 of a panel of three judges, the Federal Constitutional Court dismissed the complaint as well as the urgent application, on the basis that "the complainant solely objects to the assessment of facts and evidence by the lower courts without specifying any violation of his basic rights or rights equivalent to basic rights".

The complaint

3.1 The complainant claims that substantial grounds exist for believing that he would be at a personal risk of being subjected to torture in Turkey, and that Germany would, therefore, be violating article 3 of the Convention if he were returned to Turkey. In support of his claim, he submits that the Committee has found the practice of torture to be systematic in Turkey.

3.2 The complainant argues that the Federal Agency and the German courts overemphasized the inconsistencies in his statements during the initial asylum proceedings, which were not in substance related to his subsequent claim to reopen proceedings on the basis of new information. He admits his failure to mention his PKK activities during initial proceedings. However, he could have reasonably expected the Turkish authorities' knowledge of his participation in the highway blockade to establish sufficient grounds for recognition as a refugee. His participation in the blockade could easily be inferred from his conviction of joint coercion in road traffic, since the judicial records exchanged between German and Turkish authorities indicate the date of a criminal offence. In the absence of witnesses of his participation in the PKK training course, which was to be kept secret, he claims the benefit of doubt for himself. He refers to the Committee's general comment No. 1, which provides that, for purposes of article 3 of the Convention, the risk of torture "does not have to meet the test of being highly probable".

3.3 Moreover, the complainant refers to the written testimony by a Mr. F.S., dated 6 July 2002, in which the witness declared that he had travelled to the Kurdish festival in the Netherlands in 1994 together with the complainant, who had publicly declared to participate in the PKK.

3.4 The complainant explains the apparent contradiction between the PKK's policy of secrecy and the public presentation of 25 guerrilla candidates in front of 60,000 to 80,000 people at the Halim-Dener-Festival with the campaign, initiated by Abdullah Öcalan in March 1994, of demonstrating the Organization's presence and capacity to enforce its policies throughout Europe. His exemption from the duty to undergo military PKK training was only temporary, pending a final decision to be taken in May 1995. In any event, inconsistencies in the official PKK policy could not be raised against him.

3.5 As regards the burden of proof within national proceedings, the complainant submits that, pursuant to section 86 of the Code of Administrative Court Procedure, the administrative courts must investigate the facts of a case ex officio. He was therefore under no procedural obligation to prove his PKK membership. By stating that he took part in a PKK training course from September 1994 to January 1995, the complainant considers to have complied with his duty to cooperate with the courts.

3.6 As to the Turkish authorities' knowledge of his PKK membership, the complainant contends that there can be no doubt that the Turkish secret service observed the events taking place at the Halim-Dener-Festival in 1994. Moreover, he claims to have seen one of his training officers at the Maastricht camp, called "Yilmaz", on Turkish television after his arrest by Turkish police. "Yilmaz" reportedly agreed to cooperate with Turkish authorities, thereby placing the participants of the training camp at risk of having their identities revealed. The complainant further claims that one of his neighbour villagers told him that another participant of the training camp, called "Cektar", to whom he had close contact during the course, was captured by the Turkish army. It can be reasonably assumed, according to the complainant, that "Cektar" was handed over to the police for interrogation and tortured in order to extract information on PKK members from him.

3.7 The complainant concludes that, upon return to Turkey, he would be seized by Turkish airport police, handed over to specific police authorities for interrogation, and gravely tortured by those authorities. From previous views of the Committee he infers that the Committee found instances of torture by Turkish police likely to happen when the authorities were informed about a suspect's collaboration with the PKK.

3.8 The complainant submits that even if he had committed a criminal offence under German law by adhering to the PKK, this could not absolve the State party from its obligations under article 3 of the Convention.

3.9 The complainant claims to have exhausted all available domestic remedies. His complaint is not being examined under another procedure of international investigation or settlement.

The State party's observations on the admissibility of the complaint

4.1 On 11 November 2002, the State party submitted its observations on the admissibility of the complaint, asking the Committee to declare it inadmissible for failure to exhaust domestic remedies, pursuant to article 22, paragraph 5, of the Convention.

4.2 The State party argues that domestic remedies which need to be exhausted include the remedy of a constitutional complaint, as held by the European Court of Human Rights in several cases concerning Germany.[a] Although the complainant lodged a constitutional complaint on 22 July 2002, he failed to exhaust domestic remedies, since this complaint was not sufficiently substantiated to be accepted for adjudication. In particular, the complainant failed to state why the challenged decisions infringed his constitutionally protected rights. It follows from the *ratio decidendi* of the decision of the Federal Constitutional Court, dated 30 August 2002, that he "solely object[ed] to the assessment of facts and evidence by the lower courts".

4.3 The State party submits that domestic remedies cannot be exhausted by means of an inadmissible complaint which patently fails to comply with the admissibility criteria under national procedural law.[b] In the present case, the State party does not see any circumstances which would justify an exemption from the requirement to exhaust domestic remedies, given that the constitutional complaint combined with the application for a provisional order, pending the final decision of the Federal Constitutional Court, provided the complainant with an effective remedy.

Complainant's comments on the State party's observations on admissibility

5.1 In his response dated 9 December 2002, the complainant challenges the State party's interpretation of the Constitutional Court's decision of 30 August 2002. He argues that the Court explicitly or implicitly ruled his constitutional complaint inadmissible, arguing that it did not distinguish between aspects of admissibility and merits. However, as the complaint satisfied the admissibility criteria of section 93 of the Federal Constitutional Court Act, indicating the basic rights claimed to be infringed as well as the manner in which the lower courts' decisions violated these rights, it follows that the Federal Constitutional Court did not reject it as inadmissible "but with reference to the merits of the case".

5.2 The complainant submits that the constitutional complaint is not an additional appeal but constitutes an extraordinary remedy, allowing the Constitutional Court to determine whether basic rights have been infringed by the lower courts, when these fail to comply with their duty to ensure the enjoyment of such basic rights. However, the questions whether the requirement to exhaust all available domestic remedies includes recourse to this specific remedy, and whether this requirement is not met if a constitutional complaint is rejected as inadmissible, is immaterial in the complainant's opinion, since his constitutional complaint was not declared inadmissible by the Federal Constitutional Court in the first place.

5.3 The complainant argues that compliance with specific particularities of the German Constitution is not a prerequisite to lodge a complaint under a universal treaty-based procedure, such as the individual complaint procedure under article 22 of the Convention.

5.4 Lastly, the complainant submits that the domestic remedies rule must be applied with a certain degree of flexibility, and that only effective remedies must be exhausted. In the absence of a suspensive effect, the constitutional complaint cannot be considered an effective remedy in cases of imminent deportation.

Additional observations by the State party on admissibility

6.1 On 10 March 2003, the State party submitted its additional observations on the admissibility of the complaint. While conceding that the Federal Constitutional Court did not explicitly state whether the constitutional complaint was inadmissible or ill-founded, the State party reiterates that the wording of the operative part of the Federal Constitutional Court's decision of 30 August 2002 allowed the inference that the complainant's constitutional complaint was unsubstantiated and therefore inadmissible. Hence, the complainant failed to comply with the procedural requirements for lodging a constitutional complaint.

6.2 The State party objects to the complainant's argument that a constitutional complaint has no suspensive effect, arguing that such effect can be substituted by means of an urgent application for interim relief, under section 32 of the Federal Constitutional Court Act

Decision on admissibility

7.1 At its thirtieth session, the Committee considered the question of the admissibility of the complaint and ascertained that the same matter had not been, and was not being, examined under another procedure of international investigation or settlement. Insofar as the State party argued that the complainant had failed to exhaust domestic remedies, since his constitutional complaint did not meet the procedural requirements as to the substantiation of the claims, the Committee considered that, as an international instance which supervises States parties' compliance with their obligations under the Convention, it is not in a position to pronounce itself on the specific procedural requirements governing the submission of a constitutional complaint to the Federal Constitutional Court, unless such a complaint is manifestly incompatible with the requirement to exhaust all available domestic remedies, laid down in article 22, paragraph 5 (b), of the Convention.

7.2 The Committee noted that the complainant had lodged a constitutional complaint with the Federal Constitutional Court on 22 July 2002, which had been dismissed by the Court by formal decision dated 30 August 2002. In the absence of a manifest failure to comply with the requirement in article 22, paragraph 5 (b), of the Convention, the Committee was satisfied that, in the light of the circumstances of the case and in conformity with general principles of international law, the complainant had exhausted all available domestic remedies.

7.3 Accordingly, the Committee decided on 30 April 2003, that the complaint was admissible.

State party's observations on the merits

8.1 By note verbale of 24 February 2003, the State party submitted its observations on the merits of the complaint, arguing that the complainant had failed to substantiate a personal risk of torture in the event of his deportation to Turkey.

8.2 By reference to the Committee's general comment No. 1 on the interpretation of article 3 of the Convention, the State party stresses that the burden is on the complainant to present an arguable case for establishing a personal and present risk of torture. It considers the complainant's Kurdish origin or the fact that he sympathizes with the PKK insufficient for that purpose.

8.3 The State party submits that the different versions about the severity of the torture allegedly suffered by the complainant after his arrest in Turkey raise doubts about his credibility. While he had first stated, before the Federal Agency, that he had been insulted and thrown into dirty water, he later, before the Wiesbaden Administrative Court, supplemented his allegations to the effect that he had been lifted up with his hands tied behind his back and a stick placed under his arms.

8.4 For the State party, the author failed to prove his PKK membership, or any remarkable political activities, during exile. In particular, the letter by Mr. F.S. merely stated that the complainant had participated in cultural and political activities in Germany, without specifying any of them. Moreover, the State party argues that the mere claim to be a PKK member is not as such sufficient to substantiate a personal danger of being tortured, in the absence of a prominent role of the complainant within that organization. Out of the more than 100,000 persons proclaiming themselves PKK members during the "self-incriminating campaign" in 2001, not a single case of subsequent persecution by Turkish authorities was reported.

8.5 While conceding that participation in PKK training for a leadership role might subject a party member to personal danger upon return to Turkey, the State party denies that the complainant ever participated in such training; he did not raise this claim during his hearing before the Wiesbaden Administrative Court in 1999. It considers the complainant's explanation that he wanted to keep this participation confidential, as required by the PKK, and because PKK membership was punishable under German law, implausible, because: (a) the contradiction between the alleged confidentiality of his training and the fact that the complainant had allegedly been introduced to a wide Kurdish community at the Halim-Dener-Festival; (b) the unlikelihood that the complainant would consider an imminent danger of torture the "lesser of two evils" compared to a conviction for PKK membership in Germany; (c) the fact that, despite the dismissal of his asylum claim by the Wiesbaden Administrative Court on 7 September 1999, he did not reveal his participation in PKK training on appeal to the Higher Administrative Court of Hessen; and (d) the obvious need to supplement his claims for purposes of a new asylum application after the expulsion order of 7 December 2001 had become final and binding.

8.6 The State party submits that, even assuming that the complainant had been introduced as a "guerrilla candidate" at the festival in 1994, his subsequent failure to continue the training, let alone to fight in south-east Turkey, prevented him from occupying a prominent position within PKK.

8.7 While not excluding the possibility that the complainant's conviction of "joint coercion in road traffic" was communicated to the Turkish authorities under the international exchange of judicial records, the State party submits that the place of the offence could only be deduced indirectly from the information concerning the competent court. Even if his participation in the highway blockade could be revealed on the basis of this information, such low-profile activity was unlikely to trigger any action on the part of the Turkish authorities.

8.8 As to the burden of proof in national proceedings, the State party argues that the German courts' obligation to investigate the facts of a case only relates to verifiable facts. The Federal Agency and courts complied with this obligation by pointing out inconsistencies in the complainant's description of events and by providing him with opportunities to clarify these inconsistencies in two hearings before the Federal Agency and one before the Administrative Court of Wiesbaden.

Comments by the complainant

9.1 On 27 March and 10 May 2003, the complainant commented on the State party's merits submission, arguing that the issue before the Committee is not whether his allegations during the first set of asylum proceedings were credible, but whether knowledge by the Turkish authorities of his participation in the PKK training course would subject him to a personal and foreseeable risk of torture upon return to Turkey.

9.2 The complainant justifies inconsistencies between his initial and later submissions to the German authorities with the preliminary character, under the Asylum Procedure Law of 1982 (replaced in 1992), of his first statement before the immigration police. This, according to the police translator, had to be confined to one handwritten page, outlining the reasons for his asylum application. In his agent's letter of 7 February 1991, as well as his interview of 5 May 1991, the complainant explained in detail that, after his military service, he became a PKK sympathizer and was arrested together with other PKK activists during a demonstration. The letter also states that the police tortured him and the others during arrest to extract information on other PKK sympathizers.

9.3 The complainant recalls that complete accuracy can seldom be expected from victims of torture; his statements in the initial set of asylum proceedings should not be used to undermine his credibility with regard to his later claims.

9.4 With regard to the second set of asylum proceedings, the complainant submits that, in its decision of 18 June 2002, the Frankfurt Administrative Court itself recognized his dilemma, as he could not reveal his PKK membership without facing criminal charges in Germany. His expectation to be recognized as a refugee on the basis of his participation in the highway blockade rather than his PKK membership was therefore plausible and in conformity with the predominant jurisprudence at the time of his hearing before the Wiesbaden Administrative Court, under which refugee status was generally granted to Kurdish claimants who participated in PKK-related highway blockades.

9.5 Regarding his failure to continue PKK training after completing the course in the Netherlands, the complainant refers to a letter dated 16 February 2003 from the International Association for Human Rights of the Kurds (IMK), which confirms that the PKK had conducted training activities in the Netherlands from 1989 on, and that participants of training courses were often ordered to wait at their domicile for further instructions, or even exempted from the duty to undergo military training in Turkey.

9.6 While conceding that the Committee normally requires evidence of PKK membership, the complainant argues that the standard of proof must be applied reasonably, taking into consideration exceptional circumstances. He reiterates that the risk of torture that must be established by a complainant must not be one of high probability but rank somewhere between possibility and certainty. He claims that the written statement and a supplementary affidavit of 4 April 2003 by F.S., describing the complainant's introduction as a guerrilla candidate at the Halim-Dener-Festival, corroborate his allegations. He concludes that his statements are sufficiently reliable to shift the burden of proof to the State party.

9.7 The complainant cites a number of German court decisions which are said to acknowledge the risk that PKK suspects run of being subjected to torture after deportation to Turkey. This risk was not mitigated by the fact that he failed to take part in the PKK's armed combat. Rather, the Turkish police would try, including through torture, to extract information from him concerning other participants of the training course, PKK officials in Germany and other European countries.

9.8 The complainant reiterates that the Turkish authorities know of his participation in PKK training, as he was a member of a relatively small group of guerrilla candidates. He recalls that the Committee has repeatedly held that membership in an oppositional movement can draw the attention of the country of origin to a complainant, placing him at a personal risk of torture.

9.9 By reference to reports of, inter alia, the Human Rights Foundation of Turkey, the complainant submits that, despite the efforts of the new Turkish Government to join the European Union, torture is still widespread and systematic in Turkey, in particular with regard to suspected PKK members.

State party's additional submission and complainant's comments

10.1 On 29 October 2003, the State party contests the complainant's credibility and that he faces a risk of torture in Turkey. It submits that the complainant did not describe the severity of the alleged torture to the Federal Agency for the Recognition of Foreign Refugees on 2 May 1991, but only eight and a half years later during the appeal proceedings. This raises fundamental doubts about his credibility, which is further undermined by his inability to explain the extent and prominence of his political activities for the PKK in exile.

10.2 The State party contests that the complainant's expectation to be recognized as a refugee merely on the basis of his conviction for participation in a highway blockage was reasonable. It cites two judgements denying refugee status to asylum-seekers in similar circumstances.

10.3 As regards the standard of proof, the State party submits that a complainant should be expected to present the facts of the case in a credible and coherent manner, unlike in the present case.

10.4 Lastly, the State party argues that the human rights situation in Turkey has improved significantly. The Turkish Government has demonstrated its intention to facilitate the unproblematic return of former members or followers of PKK and to respect their fundamental rights by adopting the Act on Reintegration into Society on 29 July 2003. At the same time, the scope of application of section 169 of the Turkish Criminal Code was reduced considerably, resulting in the discontinuance of numerous criminal proceedings against PKK supporters. In the past three years, not a single case is reported where an unsuccessful asylum-seeker who returned to Turkey from Germany was tortured "in connection with former activities". The State party indicates that it would monitor the complainant's situation after his return.

11.1 On 30 January 2004, the complainant reiterates that inconsistencies in his first application for asylum are irrelevant for the assessment of his new claims in the second set of proceedings. His second asylum application was based on his participation in a PKK training course as well as the Turkish authorities' knowledge of the same.

11.2 For the complainant, the State party has conceded that training for a PKK leadership role can place a member at danger upon return to Turkey. It should therefore accept his claim that his activities for the PKK and his introduction as a guerrilla candidate place him at such risk.

11.3 As to the reasons for the late disclosure of his participation in the PKK training course, the complainant reiterates that, on the basis of the unanimous jurisprudence of the administrative courts in Hessen, where he resides, he could reasonably expect to be recognized as a refugee on account of his participation in the highway blockage. The diverging jurisprudence of administrative courts in other regions of the State party was either of more recent date or was unknown to him at the material time during the first set of asylum proceedings.

11.4 The complainant argues that, in any event, the late disclosure of these activities does not undermine his credibility on the whole. He invokes the benefit of doubt, arguing that he presented sufficient evidence to substantiate his participation in the PKK training course in a credible and coherent manner.

11.5 Regarding the general human rights situation in Turkey, the complainant submits: (a) that the armed conflict between the Turkish army and PHH/Kadek forces is ongoing; (b) that, according to the Human Rights Foundation of Turkey, the number of reported cases of torture has increased in 2003 totalling 770; (c) that, despite the reduction of the maximum length of incommunicado detention to four days, torture is still widespread and systematic, although methods such as beating or "Palestinian hanging" have been replaced by more subtle methods which leave no trace, such as solitary confinement or denial of access to clean drinking water and sanitary facilities; (d) that none of the 20 complaints related to alleged cases of torture which had been submitted in 2003 by the "Izmir Bar Association Lawyers' Group for the Prevention of Torture" were investigated; and (e) that the 2003 Act on Reintegration in Society requires former PKK members to disclose their knowledge about other PKK members and that persons refusing to disclose such information are often subjected to ill-treatment by the authorities.

11.6 The complainant concludes that there are no sufficient safeguards to ensure that he would not be tortured upon return, either during initial interviews by the police or if he refuses to cooperate with the Turkish authorities by disclosing information on the PKK.

11.7 The main proceedings concerning the complainant's application to reopen asylum proceedings are still pending before the Administrative Court of Frankfurt. In the absence of suspensive effect, these proceedings would not stay his deportation, if the Committee decided to withdraw its request for interim measures. Since it is unlikely for the Frankfurt Administrative Court to order the reopening of asylum proceedings, after having rejected the complainant's application for interim relief, the only means to prevent his expulsion would be a final decision of the Committee, with a finding of a violation of article 3.

State party's further observations

12.1 On 15 March 2004, the State party confirmed that the Administrative Court of Frankfurt had not taken a decision on the complainant's appeal against the Federal Agency's decision of 6 February 2002 not to reopen asylum proceedings and that this appeal has no suspensive effect. Although the complainant was free to formulate another application for interim court relief, such application would have little prospects of success unless it was based on new facts.

12.2 The State party recalls that it has complied with the Committee's request not to expel the complainant pending a final decision on his complaint, despite the final rejection of his first asylum application, the rejection by the Federal Agency to reopen asylum proceedings and the dismissal by the Frankfurt Administrative Court of his request for interim relief. Against this background, the State party requests the Committee to adopt a decision on the merits of the complaint at its earliest convenience.

Issues and proceedings before the Committee

13.1 The issue before the Committee is whether the forced return of the author to Turkey would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

13.2 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Turkey. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. In this regard, the Committee notes the State party's argument that the Turkish Government acted to improve the human rights situation, including through the enactment of the Reintegration into Society Act in 2003 and the discontinuance of numerous criminal proceedings against PKK supporters. It also notes the complainant's argument that recent legislative changes have not reduced the number of reported incidents of torture in Turkey (770 cases in 2003), and further recalls its conclusions and recommendations on the second periodic report of Turkey, in which it expressed concern about "[n]umerous and consistent allegations that torture and other cruel, inhuman or degrading treatment of detainees held in police custody are apparently still widespread in Turkey".[c]

13.3 The aim of the present determination, however, is to establish whether the complainant would be personally at risk of being subjected to torture in Turkey after his return. Even if a consistent pattern of gross, flagrant or mass violations of human rights existed in Turkey, such existence would not as such constitute a sufficient ground for determining that the complainant would be in danger of being subjected to torture after his return to that country; specific grounds must exist indicating that he would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

13.4 In the present case, the Committee notes that the State party draws attention to a lack of evidence about the complainant's participation in a PKK training camp in the Netherlands in 1994, and to his failure to raise this claim until late in the asylum proceedings. It equally notes the complainant's explanations relating to the difficulty of presenting witnesses from the PKK, his fear to reveal his claimed PKK membership, punishable under German law, as well as the documentation and testimony he submitted in support of his claims.

13.5 On the burden of proof, the Committee recalls that it is normally for the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory and suspicion. Although the risk does not have to meet the test of being highly probable, the Committee considers that the complainant has not provided sufficiently reliable evidence which would justify a shift of the burden of proof to the State party. In particular, it observes that the affidavit by F.S. merely corroborates the complainant's claim that he was introduced as a "guerrilla candidate" at the Halim-Dener-Festival, without proving this claim, his participation in the training camp or PKK membership. Similarly, the letter dated 16 February 2003 of the International Association for Human Rights of the Kurds, while stating that it was not implausible that the complainant had temporarily been exempted from military PKK training in Turkey, falls short of proving these claims. In the absence of a prima facie case for his participation in the PKK training camp, the Committee concludes that the complainant cannot reasonably claim the benefit of the doubt regarding these claims. Moreover, the Committee observes that it is not competent to pronounce itself on the standard of proof applied by German tribunals.

13.6 With regard to the complainant's conviction for participation in a highway blockade by PKK sympathizers in March 1994, the Committee considers that, even if the Turkish authorities knew about these events, such participation does not amount to the type of activity which would appear to make the complainant particularly vulnerable to the risk of being subjected to torture upon return to Turkey.

13.7 Regarding the complainant's allegation that he was tortured during police arrest in Mazgirt (Turkey), the Committee observes that these allegations refer to events dating from 1989 and thus to events which did not occur in the recent past.[d] In addition, the complainant has not submitted any medical evidence which would confirm possible after-effects or otherwise support his claim that he was tortured by Turkish police.

13.8 The Committee emphasizes that considerable weight must be attached to the findings of fact by the German authorities and courts and notes that proceedings are still pending before the Frankfurt Administrative Court with regard to his application to reopen asylum proceedings. However, taking into account that the Higher Administrative Court of Hessen dismissed the complainant's first asylum application by a final decision, the complainant's fresh claims relating to his alleged participation in a PKK training camp have not been sufficiently corroborated (see paragraph 13.5) to justify further postponing the Committee's decision on his complaint, pending the outcome of the proceedings before the Frankfurt Administrative Court. In this regard, the Committee notes that both parties have requested the Committee to make a final determination on the complaint (see paragraphs 11.7 and 12.2) and emphasizes that the complainant exhausted domestic remedies in the proceedings for interim relief and that only this part of the second set of asylum proceedings had suspensive effect.

13.9 The Committee concludes that, in the specific circumstances of the case, the complainant has failed to establish a foreseeable, real and personal risk of being tortured if he were to be returned to Turkey. The Committee welcomes the State party's readiness to monitor the complainant's situation following his return to Turkey and requests it to keep the Committee informed about said situation.

14. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the State party's decision to return the complainant to Turkey does not constitute a breach of article 3 of the Convention.

Notes

[a] *Djilali v. Germany*, Application No. 48437/99; *Thieme v. Germany*, Application No. 38365/97; *Teuschler v. Germany*, Application No. 47636/99; *Tamel Adel Allaoui et al. v. Germany*, Application No. 44911/98.

[b] See section 92 of the Federal Constitutional Court Act.

[c] Committee against Torture, thirtieth session (28 April-16 May 2003), Conclusions and recommendations of the Committee against Torture: Turkey, UN Doc. CAT/C/CR/30/5, 27 May 2003, para. 5 (a).

[d] See CAT, general comment No. 1: Implementation of article 3 of the Convention in the context of article 22, 21 November 1997, para. 8 (b).

Communication No. 215/2002

Submitted by:	J.A.G.V. (represented by counsel)
Alleged victim:	J.A.G.V.
State party:	Sweden
Date of complaint:	22 July 2002

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 November 2003,

Having concluded its consideration of communication No. 215/2002, submitted by Mr. J.A.G.V. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The author of the complaint is J.A.G.V., a Colombian citizen, born in 1962. In his complaint dated 22 July 2002 he claimed that his deportation to Colombia would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (henceforth referred to as "the Convention"). He is represented by counsel.

1.2 The State party ratified the Convention on 8 January 1986, when it also made the declaration under article 22 of the Convention. The Convention entered into force for the State party on 26 June 1987.

1.3 In accordance with article 22, paragraph 3, of the Convention, the Committee forwarded the complaint to the State party on 23 July 2002 for comments and requested it, under rule 108, paragraph 1, of the Committee's rules of procedure, not to deport the complainant to Colombia while the complaint was under consideration by the Committee. The Committee indicated, however, that this request could be reviewed taking into account new arguments submitted by the State party or on the basis of guarantees and assurances furnished by the Colombian authorities. The complainant was deported to Colombia on 23 July 2002. In its written submission dated 30 October 2002, the State party reported that it had not been in a position to comply with the Committee's request, since the complainant's deportation was already taking place when the request for interim measures reached the Government.

The facts as submitted to the Committee

2.1 The complainant asserts that he was a member of the Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia, FARC) and of the United Confederation of Workers (CUT). He maintains that he was arrested and tortured on several occasions during the 1990s[a] by officers of the Colombian police who, he alleges, beat him, applied electric shocks to his genitals until he lost consciousness and placed plastic bags filled with water on his head, covering his nose and mouth. He asserts that he escaped from prison several times.

2.2 The complainant says that he succeeded in leaving Colombia on a false passport, since he was wanted by the police, and arrived in Sweden under an identity other than his own on 25 March 1998.

2.3 On 26 May 1998, the complainant applied for a permanent residence permit in Sweden under the identity of Celimo Torres Romero. Subsequently, on 24 July 1998, he was arrested under that name as a suspect in a drug-trafficking case. His true identity was revealed during the police investigations.

2.4 On 24 September 1998, the Solletuna District Court sentenced the complainant to six years' imprisonment and expulsion from the territory of the State party, after finding him guilty of a drug-trafficking offence,[b] committed in Sweden. The complainant appealed to the Appeal Court of Svea which, in a decision of 26 February 1999, rejected his application. He entered prison that day and on 23 July 2002 was released on parole.

2.5 On 13 October 1998, the complainant applied for asylum under the identity of Jose Angel Grueso Vargas. On 25 March 1999 the Swedish Migration Board rejected his application, on the grounds that he had applied for asylum only after being sentenced to deportation from Swedish territory. The complainant appealed to the Swedish Aliens Appeals Board, but his appeal was rejected in a decision of 20 November 2000.[c]

2.6 On 17 July 2002, the complainant lodged a complaint with the European Court of Human Rights but withdrew it some days later.[d]

The complaint

3.1 In his initial submission the complainant argues that his deportation to Colombia would constitute a violation by Sweden of article 3 of the Convention, since he faced the risk of being subjected to further torture in Colombia.

3.2 The complainant contends that the Swedish authorities had no grounds for their decision to refuse him asylum, since note was merely taken of the fact that the Colombian Government had drawn up programmes which would protect Mr Grueso Vargas, without taking into account the fact that the complainant had been tortured in Colombia. He further claims that the Swedish authorities based their refusal on the lack of credibility that they attached to his assertions, although he submitted medical certificates as evidence of torture.

State party's observations on admissibility and the merits

4.1 In its observations of 30 October 2002, the State party asserts that the same matter should be considered as having been submitted to another procedure of international settlement, since the complainant submitted his complaint to the European Court of Human Rights. It adds that the complainant decided to withdraw his case because no interim measures were adopted, even though the complaint had not yet been formally registered.

4.2 The State party acknowledges that all domestic remedies have been exhausted; it nevertheless maintains that the complaint should be declared inadmissible on the basis of article 22, paragraph 5 (b), of the Convention, since the complaint is not sufficiently substantiated.

4.3 Should the Committee declare the complaint to be admissible, the State party asserts that, as regards the merits of the complaint, returning the complainant to Colombia would not constitute a violation of article 3 of the Convention. It points out that, according to the Committee's jurisprudence, application of article 3 of the Convention must take account of (a) the general human rights situation in the country, and (b) the danger personally faced by the complainant of being subjected to torture in the country to which he is returned.

4.4 The State party points out that it is aware of the general human rights situation in Colombia, and considers that it is unnecessary to expand on it; the State party therefore restricts itself to considering the complainant's personal risk of being subjected to torture upon return to Colombia. It affirms that the circumstances invoked by the complainant are not sufficient evidence that he runs a foreseeable, real and personal risk of being tortured in Colombia, and refers in this connection to the Committee's jurisprudence on the interpretation of article 3 of the Convention.[e]

4.5 The State party adds that the complainant's credibility is of vital importance in taking a decision on the application for asylum, and that the national authorities conducting the interviews are naturally in an excellent position to assess that credibility. The State party contends that the common feature of the complainant's declarations to the Migration Board and to the Aliens Appeals Board lies in the doubts they raised as to his credibility. It stresses that the complainant applied for asylum several days after the Sollotuna District Court had handed down a judgement against him ordering his expulsion from Swedish territory for having committed a drug-trafficking offence. It adds that the complainant moreover did not give his true identity, which was revealed later in the judicial investigations; and that the result of all of this was that the migration authorities attached no credibility to the complainant's assertions that he risked being tortured if he were deported to Colombia.

4.6 In the State party's view, it is not logical for someone applying for protection to put his relations with the new country at risk by committing an offence; moreover, the offence was committed within three months of his arrival in Sweden. The State party adds that the complainant was found guilty by the judicial authorities, that according to the police investigations he purchased the cocaine in Colombia before leaving the country, and that his brother-in-law carried the drug to Sweden. In the view of the State party, the foregoing does not reflect the behaviour of a genuine asylum-seeker.

4.7 The State party contends that the complainant has provided no evidence of his alleged political activities in Colombia. According to the information furnished to it, the complainant was prosecuted for theft in Colombia, while at no time did he give details to the Swedish migration authorities concerning the alleged acts of torture to which he was subjected, nor the times and places of his arrests. The State party asserts that the medical reports were the only evidence he submitted, but that they only mentioned the possibility that the complainant had been the victim of torture.

4.8 In another written submission dated 8 July 2003, the State party informs the Committee that it had received reports from the Colombian authorities informing it that on his return the complainant was briefly detained for the offence of "escaping from prison", and that he was also cited as a suspect in the commission of several other offences of a non-political nature.

Comments by the complainant concerning the State party's arguments

5.1 In a written submission of 17 April 2003, the complainant's counsel commented on the State party's observations. He asserts that he was unable to obtain pertinent evidence of the complainant's political activities or of the acts of torture to which he was subjected in Colombia.[f]

5.2 The complainant asserts that his wife, Mrs. Karin Berg, visited him after he had been deported and imprisoned in Colombia. He also submits a copy of a written statement to a Colombian judicial authority by Hector Mosquera, who declared in 1994 that he had been subjected to torture. His counsel asserts that this is the same person as the complainant.[g]

5.3 The complainant says that he was deprived of his freedom on arrival at Bogota Airport, and that on 30 July 1999, while he was in Sweden, he was sentenced by the Third Criminal Circuit Court of Cartago to eight months' imprisonment for the offence of "escaping from prison", this being evidence that he was persecuted. He adds that he had travelled under another identity because he was afraid of being arrested by the Colombian authorities, and that he did not commit the offence for which he was tried and sentenced in Sweden.

5.4 The complainant says that in accordance with Swedish legislation, if an international organization makes a request for interim measures, the execution of the measure of expulsion must be halted. He adds that his counsel alerted the State party's authorities to the interim measures he had requested from the Committee, and that the expulsion procedure is only concluded when the alien is accepted by the authorities of the country to which he is sent; consequently, the expulsion could have been suspended when he stopped over in Madrid.

5.5 The complainant contends that when he was deported he was exposed to a real and personal risk of torture in Colombia, and the fact that this did not take place is due to the circumstances of the case, such as the considerable assistance he received and the measures taken internationally to draw the State party's attention to the case;[h] as a result he was released within a relatively brief period, but the risk still exists and the possibility that he may still be prosecuted should not be ruled out. He maintains that he currently fears that paramilitary groups could capture and torture or murder him.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee notes the State party's assertion that the complaint should be declared inadmissible, since it has already been submitted to the European Court of Human Rights. The Committee notes here that the complaint was withdrawn before it was examined by that body. Consequently, the Committee considers that article 22, paragraph 5 (a), of the Convention is not an obstacle to examination of the complaint.

6.2 The Committee also observes that the State party acknowledges that domestic remedies have been exhausted, consequently, it sees no further obstacles to the admissibility of the complaint. It therefore declares the complaint admissible and proceeds to consideration of the merits.

7.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

7.2 The Committee must decide whether the deportation of the complainant to Colombia constituted a violation of the State party's obligation under article 3 of the Convention not to expel or return an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

7.3 The Committee must assess whether there are grounds to believe that the author of the complaint would be in personal danger of being subjected to torture on returning to Colombia. In order to reach this conclusion, the Committee must take into account all relevant considerations in accordance with article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee recalls, however, that the aim is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person may not be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.4 In the present case, the Committee notes the observations of the State party to the effect that the complainant did not produce evidence of having been involved in political activities in Colombia, and that he did not run a real and personal risk of being subjected to torture, since it had also received information from the Colombian authorities reporting that the complainant had been briefly detained, and notes that there is no evidence that he was tortured subsequent to his return to Colombia. The Committee further observes that his counsel reports that the complainant is currently on parole.

7.5 The Committee moreover notes the circumstances which gave rise to doubts on the part of the State party's authorities concerning the need to grant the complainant protection. It is aware that the complainant has not adduced sufficient evidence to prove that he was subjected to torture in Colombia.[1] Bearing in mind the foregoing, the Committee considers that the information provided by the complainant does not provide substantial grounds for believing that he was personally in danger of being tortured when returned to Colombia.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the author of the complaint has not substantiated his claim that he would be subjected to torture upon his return to Colombia, and therefore concludes that the complainant's removal to that country did not constitute a breach by the State party of article 3 of the Convention.

Notes

[a] The complainant does not indicate in his initial communication or in his subsequent comments when or where these acts of torture allegedly took place.

[b] The offence involved smuggling a kilogramme of cocaine from Colombia to Sweden with the intention of selling it in the territory of the State party.

[c] The Swedish Aliens Appeals Board further considered that the complainant had entered Swedish territory under a false identity, and that under that identity he had applied in 1998 for a work permit, claiming that he was involved with a Swedish woman, although he was married and had a family in Colombia. In the Board's opinion, all of this seriously undermined his credibility when it came to requiring the protection of the State party.

[d] No date is specified.

[e] *S.M.R. and M.M.R. v. Sweden*, communication No. 103/1998, decision adopted 5 May 1999, paras. 9.7 and 9.4; *S.L. v. Sweden*, communication No. 150/1999, decision adopted 11 May 2001, para. 6.4.

[f] The complainant's counsel suggests at the end of his submission that the complaint could be supplemented by further information, but has sent no more material since that date.

[g] The complainant has submitted a copy of a "wanted" announcement issued by the authorities of a prison in Colombia, but the secretariat has doubts as to its veracity.

[h] On 24 July 2002, the Special Rapporteur on torture urgently called the complainant's case to the attention of the Government of Colombia.

[i] Note: medical certificates only.

Communication No. 228/2003

Submitted by: T.M. (represented by counsel, Ms. Gunnel Stenberg)

Alleged victim: T.M.

State party: Sweden

Date of complaint: 6 March 2003 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 18 November 2003,

Having concluded its consideration of complaint No. 228/2003, submitted to the Committee against Torture by Mr. T.M. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision of the Committee under article 22 of the Convention.

1.1 The complainant is Mr. T.M., a Bangladeshi national born in 1973 and awaiting deportation from Sweden to Bangladesh at the time of submission of the complaint. He claims that his expulsion to Bangladesh would, in the circumstances, constitute a violation by Sweden of articles 2, 3 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

The facts as presented by the author

2.1 The complainant entered Sweden on 26 September 1999 and immediately applied for asylum. During an Immigration Board interview on the same day, he stated he had been become a member of the Bangladesh Freedom Party (hereafter "BFP") in 1991, an allegedly illegal political party, and in 1994 started actively working for the party, including by organizing, and participating in, meetings and demonstrations. In 1997, upon release on bail three days after being arrested for illegal possession of weapons, he claimed to have gone into hiding for two years. As the political situation worsened, he paid a smuggler to arrange departure from Bangladesh.

2.2 On 29 September 1999, the Immigration Board held a second interview with the complainant. He stated that from 1994 to 1997 he was joint secretary of the party in the Dhaka city party district. He claimed Government members harass and abuse party members, and that he too, as a known party figure, suffered harassment. He claimed to have been falsely accused of murder, possession of weapons and taking bribes in 1997. While he was under arrest, he claimed to have been tortured with kicks and truncheons, and he adds that he continues to suffer from a back injury as a result. The party arranged for his release on bail, whereupon he went into hiding outside Dhaka. He allegedly was unaware whether he had been convicted of the offences of which he had been accused. By subsequent written submissions and seeking to clarify "misunderstandings", the complainant's counsel observed that the party was legal but due to Government impediments of its activities, its activities were "underground". Counsel stated that the bribe charges were in fact charges to the effect that the complainant had unlawfully extorted money, charges which had been brought by police upon pressure from the party then in Government, the Awami League.

2.3 On 8 October 1999, the Immigration Board denied his application. The Board established a variety of credibility problems related to documentation, and that he had not established his identity. On the substance of the claim, it found that the BFP was legal in Bangladesh, and that the complainant had not engaged in any impermissible political activity. While aware of some politically-motivated charges, the Board considered that the criminal justice system in Bangladesh provided sufficient guarantees for fair trial in respect of any criminal charges. The Board observed that the complainant had been released after 3 days in custody, had not been able to provide any documentary evidence supporting his allegations of charges against him and had provided very vague information as to any legal proceedings after his release. It thus concluded that the complainant had not shown reason to believe he was at risk of punishment for political reasons.

2.4 The complainant appealed to the Aliens Appeals Board, submitting what he claimed were copies of four court documents sent by his Bangladeshi lawyer, and a statement by the latter dated 16 October 1999. According to the statement, a trial in absentia still proceeded against the complainant, in which the statement's author had been appointed "lawyer of state defendant". The statement also argued that the political situation in Bangladesh was critical, that the police were seeking to arrest the complainant, and that Awami League members were seeking to kill him. The complainant submitted a document, dated 14 October 1999, which was described as a BFP certificate from the "Office Secretary" of the party's Central Executive Committee, stating that the complainant had been arrested and subjected to torture for three days, that his life was at risk and that he "may be killed by Govt. thugs if [he] returns home".

2.5 On 10 December 1999, the Aliens Appeals Board rejected the appeal, observing that affiliation to and support of the BFP, a legal party permitted to operate, did not constitute asylum grounds. Nor was the situation in Bangladesh such that persecution by private individuals supported by the authorities or where the latter, due to lack of will or ability, failed to take appropriate measures against such persecution. Concerning the false charges allegedly made, the Board considered that, based on its knowledge of the Bangladeshi judicial system, he would have his case determined in a legally acceptable manner. As to the allegation of abuse following arrest, the Board accepted that these kinds of acts were engaged in by police, but rejected that they were sanctioned by the Government or the authorities, raising any risk of persecution or abuse in the event of a return. Following the Appeals Board's decision, the complainant went into hiding, where he remained until located and detained on 4 March 2003.

2.6 On 20 December 2002, the complainant lodged a new application with the Aliens Appeals Board, arguing that during his detention in January 1997, he had been subjected to different forms of severe torture that resulted in physical and mental injuries. His family had allegedly been threatened by Awami League members after his departure. If he returned, he would be arrested, and given allegedly widespread torture during criminal investigations it was "very improbable" that he would be able to avoid such treatment. As a result of the torture allegedly suffered, he suffered from post-traumatic stress syndrome (PTSS), such that return would place him at "great risk" of taking his own life. He presented psychiatric certificates on his state of mental health as well as detailed forensic reports undertaken in Sweden, which assessed that the complainant had been subjected to torture in 1997.

2.7 On 16 January 2003, the Board rejected the application, applying the standards of article 3 of the Convention and the Committee's general comment on its implementation. It observed that the complainant had waited three years since the expulsion order became final before first complaining about acts of torture during his detention in 1997. Applying an appropriately low burden of proof, however, it found that the medical evidence supported a claim of torture. As to whether there was a current risk of torture, the Board found that in the light of the passage of six years, of the complainant's inability to show he was still being sought by Bangladeshi authorities, and of the fall from power of the party allegedly persecuting him, there was no reason presently to fear such treatment. As to his health, the Board observed that he had at no previous point complained of the psychological problems suddenly alleged, nor had he shown that he had been in contact with any mental health-care provider in Sweden. It thus concluded that his mental health status was primarily due to his unsettled life in Sweden resulting from his failure to comply with the expulsion order and continued illegal presence in the country.

2.8 On 4 March 2003, the complainant was arrested after being reported to the police for setting fire to a psychiatric clinic where he had sought treatment. On the morning of 7 March 2003, the complaint was received by the Committee. Later on 7 March 2003, counsel advised that the complainant had been removed from Sweden that same afternoon, and allegedly without medication for mental health problems nor his clothes. She alleged that the previous evening the complainant had sought to cut himself with a plastic knife.

The complaint

3.1 The complainant claims he would be tortured in the event of return, and that his return would violate articles 2, 3 and 16 of the Convention. He claims that he would be arrested upon return to face protracted legal proceedings, and that this was not affected by the change of government, especially as no amnesty had been issued. The complainant cites the 2001 human rights report of the United States' State Department, unspecified Amnesty International reports and a recent Swedish Foreign Office report, all on the general human rights situation in Bangladesh, as support for the proposition that the police routinely resorts to torture in investigations, with impunity, and that thus he would be exposed to a "very high risk" of torture in the event of return and arrest. Only exceptionally, he claims, are police officers sanctioned for use of torture. As evidence for the "almost total impunity" enjoyed by police officers and the country's alleged unwillingness to respect its obligations under the Convention, he refers to an indemnity ordinance issued in respect of acts committed by the armed forces between 16 October [presumably 2002] and 24 January 2003.

3.2 The complainant also argues that his removal from Sweden in the circumstances described in paragraph 2.8 above violated article 16 of the Convention.

3.3 The complainant states that the same matter has not been submitted for examination under another procedure of international investigation or settlement.

The State party's observations on admissibility and merits

4.1 By letter of 12 May 2003, the State party contested the admissibility and merits of the complaint. While conceding domestic remedies had been exhausted, it argues that, in the light of its submissions on the merits, the complainant has not substantiated, for purposes of admissibility, his claims under article 3. As to the claim that his expulsion in addition would violate articles 2 and 16, the State party notes that article 2 requires a State party to take effective measures to prevent acts of torture, and that an expulsion cannot be considered an act which intentionally causes pain or suffering of such severity so as to bring it within the definition of torture contained in article 1, for one of the purposes enumerated there. This claim is thus incompatible with the provisions of the Convention, is insufficiently substantiated, for purposes of admissibility, and the complainant does not have the necessary victim status to bring this claim. As to article 16, the State party refers to the Committee's jurisprudence that the obligation of non-refoulement does not extend to situations where a risk of cruel, inhuman or degrading treatment may exist,[a] and therefore considers this claim incompatible with the provisions of the Convention.

4.2 As to the separate claim that the specific circumstances of the complainant's expulsion violated article 16 in view of his physical and mental condition, the State party refers to academic commentary that the purpose of this article is to protect persons deprived of their liberty or under factual power or control of the person responsible for treatment or punishment. As the complainant cannot be a victim in this sense, the article is inapplicable. Moreover, for the reasons developed below, this claim is also insufficiently substantiated, for purposes of admissibility.

4.3 On the merits, the State party argues that, in the light of the general human rights situation in Bangladesh and the evidence advanced, the complainant failed to make out a personal and substantial risk of torture, as defined in article 1, which would render his expulsion contrary to article 3. As to the general situation, the State party concedes that it is problematic, but points to progressive improvement over a longer term. Following the introduction of democratic rule in 1991, no systematic oppression of dissidents has been reported, and human rights groups are generally permitted to conduct their activities. The Bangladesh National Party (BNP) returned to power (after holding power from 1991 to 1996 and being in opposition from 1996 to 2001, to the Awami League) following elections on 1 October 2001 declared free and fair. Violence is however a pervasive element in political life, with supporters of different parties clashing at rallies and police reportedly often engaging in arbitrary arrest and abuse during interrogations. Acts of torture are seldom investigated, and the police, whose members are allegedly utilized by the Government for political purposes, are reluctant to pursue investigations against persons affiliated with Government. While lower courts are susceptible to executive pressure, higher courts are by and large independent and rule against the Government in high profile cases. Persons are occasionally tried in absentia, though no right of retrial exists if the person returns.

4.4 In 2002, members of the State party's Aliens Appeals Board visited Bangladesh, meeting with advocates, members of Parliament and the Executive, representatives of local embassies and international organizations, and found no institutional persecution. While "high profile" persons may be arrested and harassed by the police, political persecution is rare at the grass-roots level. Court cases based on false accusations are common, but directed primarily against senior party officials. Harassment can be avoided by internal relocation within the country. The State party points out Bangladesh is a party to the Convention and, since 2001, to the International Covenant on Civil and Political Rights.

4.5 Turning to the real, personal and foreseeable risk of torture which the complainant is required to face under article 3 in the event of a return, the State party points out that its authorities explicitly applied the relevant Convention provisions. In addition, the competent authorities are in an advantageous position in assessing applications, particularly in the light of the experience gained in granting 629 cases on article 3 grounds in 1,427 cases from Bangladesh over a 10-year period. Accordingly, weight should be given to the decisions of the Immigration and Aliens Appeals Boards, whose reasoning the State party adopts. The State party emphasizes, with reference to the Committee's jurisprudence, that past torture is not sufficient, of itself, to determine a risk of future torture contrary to article 3.

4.6 The State party observes that, on the complainant's own account, false charges were lodged and police abuses committed against him on account of strong governmental pressure. The alleged torture took place over six years ago, and the complainant has been politically inactive since January 1997. Given that the Bangladeshi political context has significantly changed since the complainant's arrival in Sweden, notably by virtue of the defeat of the Awami League Government in the 2001 elections and its replacement by the "anti-Awami League" comprising the complainant's BFP party and another party, which enjoy good relations with each other, there is no ground currently to suspect politically-motivated interest in the complainant. Even if former opponents sought to locate him, any ill-treatment from such quarters would emanate from private parties without the consent or acquiescence of the State and thus fall outside article 3.

4.7 With reference to the "court documents" and statement supplied to the Aliens Appeals Board, the State party observes that it is unable to determine whether these reliably substantiate the contention that legal proceedings were initiated against the complainant in 1997 and remained pending in October 1999. No evidence has been advanced to suggest that these proceedings instigated in the Awami League era currently remain pending. Even if this were so, this would not demonstrate a real and personal risk of torture, and the general human rights situation does not suggest that ipso facto all persons liable to be arrested on criminal charges on return to Bangladesh face a substantial risk of torture. Given the substantial change since 1997 in the complainant's own and in his country's circumstances, therefore, he has not made out the necessary case under the Convention that his expulsion violated his rights under article 3.

4.8 On the claims under articles 2 and 16, if considered applicable by the Committee, the State party refers to two cases in which there was medical evidence of PTSS and a claim that state of health prevented expulsion. In *G.R.B. v. Sweden*, the Committee considered that an aggravation of the state of health possibly caused by deportation did not rise to the threshold of treatment proscribed by article 16, attributable to the State party, while in *S.V. v. Canada*, the

Committee considered the claim insufficiently substantiated.[b] The State party refers to the jurisprudence of the European Court of Human Rights on equivalent provisions that have held that ill-treatment must rise to a minimum level of severity, and that there is a high threshold where the case does not concern the State party's responsibility for infliction of harm. No exceptional circumstances exist in the present case that the enforcement of the expulsion order gives rise to such issues.

4.9 The State party notes that the medical reports provided by the complainant suggest a diagnosis of PTSS, with a finding on 16 December 2002 apparently made on the basis of an examination on 31 July 2002 that the complainant showed deep depression with a serious risk of suicide. On 29 October 2002, however, the risk of suicide was described as "very difficult to assess". The State party observes that mental health issues were invoked for the first time in a new residence application filed in December 2002, three years after the complainant's arrival and two years after his abscondment, suggesting that a mental deterioration arose as a result of denial of entry to Sweden and his unsettled unlawful presence in the country. On the information available, he did not seek or receive any type of regular medical treatment, or submit to psychiatric care. Nor, to the extent that he is said to require medical attention, would this be unavailable in Bangladesh. Even if his contention of fearing a return to Bangladesh as he suffered from PTSS is relevant to an assessment under article 16, which the State party rejects, the complainant has not made out a substantial basis for this fear.

Complainant's comments on the State party's submissions

5.1 By letter of 15 May 2003, counsel for the alleged victim was requested to make any comments on the State party's submissions within six weeks, and advised that failure to do so would result in the Committee's consideration of the case on the basis of the information before it. No such comments were received.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee further notes that the State party concedes that domestic remedies have been exhausted.

6.2 To the extent that the complainant argues that the State party would be in breach of articles 2 and 6 through exposing him to possible ill-treatment in Bangladesh, the Committee observes that the scope of the non-refoulement obligation described in article 3 does not extend to situations of ill-treatment envisaged by article 16. Accordingly, the claims under articles 2 and 16 relating to the expulsion of the complainant are inadmissible *ratione materiae* as incompatible with the provisions of the Convention. In addition, concerning the claim under article 16 relating to the circumstances of the complainant's expulsion, the Committee observes, with reference to its jurisprudence, that an aggravation of the condition of an individual's physical or mental health through deportation is generally insufficient, in the absence of other factors, to amount to degrading treatment in violation of article 16.[c] In the absence of exceptional circumstances and in view of counsel's failure to respond to the State party's argument that it had not been shown that the appropriate medical care was unavailable to the complainant in Bangladesh, the Committee considers that he has failed sufficiently to substantiate this claim, for purposes of admissibility, and it must accordingly be considered inadmissible.

6.3 With respect to the complainant's claim under article 3 concerning torture, for purposes of admissibility, the Committee considers, particularly in light of the complainant's account of his previous torture, that he has made out a prima facie case which, if established on the merits, would reveal a violation of article 3. In the absence of any further obstacles to the admissibility of this claim, the Committee accordingly proceeds with the consideration of the merits thereof.

7.1 The issue before the Committee is whether the removal of the complainant to Bangladesh violated the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Bangladesh. In assessing the risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 In the present case, the Committee observes that the Aliens Appeals Board accepted the complainant's (belated) contention that he had been subjected to torture in January 1997. The Committee notes, however, that the complainant's case was based on the contention that, as a political activist for the BFP, false charges were brought against him, and that he suffered abuse at the hands of the police, as a result of political pressure from the government authorities then in power. The Committee notes that this practice has been documented by several sources. In the light of the six years that have passed since the alleged torture took place, however, and, more pertinently, given that the complainant's political party now participates in government in Bangladesh, the Committee considers that the complainant has failed to show that substantial grounds existed, at the time of his removal, that he was at a real and personal risk of being subjected to torture.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the complainant has not substantiated his claim that he would be subjected to torture upon return to Bangladesh and therefore concludes that the complainant's removal to that country did not constitute a breach by the State party of article 3 of the Convention.

Notes

[a] *B.S. v. Canada*, case No. 166/2000, decision adopted 14 November 2001.

[b] Case No. 83/1997, decision adopted 15 May 1998, and case No. 49/1996, decision adopted 15 May 2001.

[c] Ibid.

Appendix

Individual opinion by Committee member, Mr. Fernando Mariño (dissenting in part)

I wish to indicate my disagreement with the Committee's decision declaring this complaint inadmissible *ratione materiae* on the grounds that the complainant's claim of a possible violation of articles 2 and 16, should he be expelled, is incompatible with the Convention (art. 22, para. 2).

On the one hand, the fact that expulsion causing the subject severe pain or suffering, whether physical or mental, may constitute torture within the meaning of article 1 of the Convention if, for instance, it is enforced pursuant to a discriminatory policy, should not be discounted.

In any event, the right way to respond to the claim of a violation of article 2 in the complaint under consideration would have been to find it inadmissible on the grounds that it was manifestly unfounded (rules of procedure, rule 107 (b)), if that is what the Committee had wanted.

On the other hand, expulsion can obviously constitute cruel, inhuman or degrading treatment or punishment, and here, too, the Convention imposes obligations on States parties.

The exercise, in other words, is to consider not just how States are complying with their obligations under article 3 of the Convention, but how they are complying with all their obligations under an agreement whose ultimate objective is (sixth preambular paragraph) to "make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world".

A further consideration is that under article 31, paragraph 3, of the 1969 Vienna Convention on the Law of Treaties, when interpreting a treaty account must be taken, together with the context, of "any relevant rules of international law applicable in the relations between the parties"; this is relevant inasmuch as it applies to the possible existence of general rules of international law prohibiting cruel, inhuman or degrading treatment.

In keeping with the Committee's jurisprudence in case *B.S. v. Canada* (case No. 166/2000, decision adopted on 14 November 2001) it would, in my judgement, have been more correct to find that the complaint raised substantive issues relating to a possible violation of article 16 which should be dealt with at the merits and not at the admissibility stage.

(*Signed*): Mr. Fernando Mariño

B. Decisions on inadmissibility

Communication No. 202/2002

Submitted by:	Helle Jensen (represented by counsel, Mr. Tyge Trier and Mr. Bent Sørensen)
Alleged victim:	Ms. Helle Jensen
State party:	Denmark
Date of complaint:	15 January 2002

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 5 May 2004,

Having concluded its consideration of complaint No. 202/2002, submitted to the Committee against Torture by Ms. Helle Jensen, under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, her counsel and the State party,

Adopts the following decision on admissibility.

1. The complainant is Ms. Helle Jensen, a Danish citizen, currently residing in North Western Zealand. She claims to be a victim of a violation of articles 1, paragraph 1, 12 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel.

The facts as presented

2.1 On 29 April 1998, the complainant was arrested in her home in North Western Zealand and charged with smuggling cigarettes, under section 289 of the Danish Criminal Code, and section 73 (3), subsection (2), of the Danish Customs Act. She was later also indicted with "attempted participation" in agreeing to "receive and distribute" hash, under sections 191 (2), subsection (1), and section 21 of the Criminal Code.

2.2 On 30 April 1998, the complainant was brought before a judge of the District Court of Kalundborg. Pursuant to a request by the Chief Constable, the Court ordered the complainant's detention and solitary confinement, pursuant to section 762 (1) (iii) and 770 (a) of the Administration of Justice Act (hereinafter "the Act"). The Court considered that she should be held in solitary confinement, as there were reasonable grounds to suspect that she was guilty as charged and would attempt to obstruct the investigation by contacting others involved. The pre-trial detention period was set to expire on 26 May 1998, and the solitary confinement period on 12 May 1998. On 4 May 1998, the High Court of Eastern Denmark upheld the order on the grounds stated by the District Court.

2.3 On 11 May 1998, the District Court considered whether to continue the complainant's solitary confinement. Counsel submitted that the measure was disproportionately hard, as the complainant had three children - twins of 3 years and a child of 7. The District Court ordered her continued detention in solitary confinement until 26 May 1998, as the grounds for such confinement continued to apply. On 13 May 1998, the High Court upheld the order on the grounds stated by the District Court.

2.4 On 26 May 1998, the District Court considered whether to prolong pre-trial detention and solitary confinement. Counsel objected to continued detention, as "the detainee's personal health has deteriorated substantially during her pre-trial detention from 30 April 1998 until now, which is confirmed by the detainee's condition and the two medical records". The District Court ordered that she remain in solitary confinement until 23 June 1998, "on the grounds of the complexity of the case, and as some of the persons involved are still at large ...". On 28 May 1998, the High Court upheld the District Court's order.

2.5 On 28 May 1998, at the request of the complainant's counsel, the prison doctor reported on her state of health. The doctor had treated the complainant on 15 and 28 May 1998, and the emergency service physician, a crisis therapist, on 22 May 1998. The report concluded that the complainant appeared to be "close to a psychotic breakdown ... The inmate's condition can fully be explained as the result of incarceration and solitary confinement. I most urgently recommend that solitary confinement be discontinued promptly and that it is considered whether alternative placement can be found that will enable the inmate to have more association with her children. I find the inmate's health threatened and will monitor her closely". This report was produced in the High Court, when it considered the complainant's appeal of the District Court's order of 26 May 1998. On 29 May 1998, the complainant was admitted to the County Hospital of Nykøbing, Zealand. She discharged herself the next day, as she wanted to be near her children.

2.6 On 18 June 1998, the complainant's solitary confinement was terminated. On 19 June 1998, the prison physician forwarded another report to the Chief Constable of Kalundborg. It stated, "it is of the utmost importance that Ms. Jensen's solitary confinement is terminated; this should on health grounds have been done already, and I understand that the solitary confinement was terminated yesterday evening". Finally, he refers to a report of the same date from a psychotherapist, in which he "must clearly express Ms. Jensen's need not only for getting out of solitary confinement, but also for being released from prison during the further investigation, until the final judgement. Otherwise, all parties involved must anticipate an unnecessary spontaneous psychotic condition that will affect Ms. Jensen for the rest of her life". These reports were produced during a hearing before the District Court on 22 June 1998. The Court established that the complainant was no longer held in solitary confinement but ordered the extension of the pre-trial detention period until 20 July 1998. It also ordered, with the complainant's consent, that she should be examined as an outpatient by a forensic psychiatrist during the rest of her stay in prison.

2.7 On 9 July 1998, the consultant of the Department of Forensic Psychiatry of the County Hospital of Nykøbing, Zealand forwarded his opinion on the complainant's mental health, concluding that "the only proper treatment would be to unite [the complainant] with her children as soon as possible, either with her parents or in one of the institutions of the Prison and Probation Service, and to give her adequate psychotherapeutic help in this environment".

On 14 July 1998, this report was produced before the District Court, which decided to extend the complainant's pre-trial detention but also decided, with her consent, that she be placed in alternative detention at the Lyng Halfway House of the Prison and Probation Service, together with her three children. She was transferred there on 17 July 1998 and remained in this facility until her trial on 29 October 1998.

2.8 On 30 April 2001, the complainant's representative, Professor Bent Sørensen, an expert in the field of torture identification and research, wrote to the Director of Public Prosecutions (thereinafter "the DPP") requesting an investigation into the possibility that the complainant had been subjected to psychological torture by virtue of her detention in solitary confinement. On 14 August 2001, the DPP responded that he found no basis for initiating such an investigation as, in his opinion, "there is no basis for believing that the pre-trial detention in solitary confinement was effected for the purpose of obtaining information or a confession from the person charged or a third party, making it an act of torture as defined in the Convention against Torture". Despite two further subsequent requests to initiate an investigation, the DPP refused to reconsider his decision.

The complaint

3.1 Ms. Jensen claims that the State party violated articles 1, paragraph 1, and 16 of the Convention, by subjecting her to psychological torture and acts of cruel, inhuman or degrading treatment or punishment, by detaining her in solitary confinement from 29 April to 18 June 1998, despite medical evidence demonstrating its adverse effect on her mental health.

3.2 The complainant contends that the State party violated article 12 of the Convention, as the DPP failed to carry out a prompt and impartial investigation into the allegations of psychological torture, as requested by her representative.

3.3 The complainant argues that she exhausted domestic remedies, as in the last letter written to the DPP her representative had indicated that if the DPP did not respond to his letter, he would assume that domestic remedies were deemed to have been exhausted. The complainant's representative did not receive a response.

The State party's submission on admissibility and merits

4.1 By submission of 26 April 2002, the State party challenges the admissibility and merits of the complaint. It invokes section 762 of the Criminal Procedure Act, which at the time of the complainant's imprisonment provided for pre-trial detention. Under the applicable terms of this Act, the court decides, at the request of the police, whether the person charged should be held in pre-trial detention. The order must fix a period for the pre-trial detention, which must be as short as possible and may not exceed four weeks. The period may be extended, but not by more than four weeks at a time. An order for detention may be appealed to a superior court. Finally, it states that pre-trial detention must be terminated, if necessary by court order, when the charges are dropped or the conditions for detention no longer exist. If the court finds that the investigation is not pursued with adequate expediency or continued pre-trial detention is not reasonable, the court must terminate it.

4.2 The State party furnishes section 770 of the Administration of Justice Act, which provides for detention in solitary confinement. Under this section, it is necessary to have reasonable grounds for suspecting that the person charged has committed an offence, which is subject to public prosecution and, under the law, may result in imprisonment for at least one year and six months. Proportionality is a precondition for any decision on initiation and continuation of pre-trial detention in solitary confinement. The State party notes that the provisions on pre-trial detention in solitary confinement were substantially amended by Act No. 428 of 31 May 2000. The new provisions entered into force on 1 July 2000. The purpose of the amendment was to limit the resort to, and duration of, pre-trial detention in solitary confinement; it provides for more specific criteria for initiating and continuing solitary confinement, and shorter periods of such confinement.[a]

4.3 The State party challenges the admissibility of the complaint for failure to exhaust domestic remedies. Firstly, the complainant could have applied to the Board of Appeal for leave to appeal the orders of the High Court to the Supreme Court. Under section 973 of the Act, the Board could have granted leave to appeal, "if the appeal relates to questions of a fundamental nature or specific reasons otherwise make it appropriate". In support of her application, she could have argued that her pre-trial detention in solitary confinement was contrary to the Convention. The State party notes that the European Court of Human Rights has held that an application to the Board of Appeal for leave to appeal is a remedy that must be exhausted for the purposes of admissibility of a complaint under the European Convention.[b]

4.4 Secondly, although the complainant was convicted, she could have made a claim for compensation under section 1018 a (2) or h of the Act. Pursuant to section 1018 a (2), a person who was arrested or held in pre-trial detention as part of a criminal prosecution is entitled to compensation for injury caused while detained if "the deprivation of liberty applied during the case is not reasonably proportionate to the outcome of the prosecution, or if it is found reasonable for other specific reasons". The fact that pre-trial detention in solitary confinement is alleged to have harmed the complainant would have been particularly relevant to such a claim for compensation. Pursuant to section 1018 h, anyone may claim compensation in respect of criminal proceedings on the basis of the general rules of tort law.

4.5 A claim for compensation under section 1018 a (2) is considered by the Regional Public Prosecutor, with the possibility of appeal to the DPP, and a claim under section 1018 h is considered by the DPP with the possibility of appeal to the Ministry of Justice. In both cases, the complainant would have the possibility of filing a claim before the court, under section 1018 f (1), in the event of a refusal on appeal. To demonstrate that this remedy is available and effective in the circumstances of the present complaint, the State party invokes the following example of a similar case. In a Supreme Court judgement of 5 September 2000, a person who had been acquitted in a criminal case filed a claim for compensation for loss of employment and permanent disablement as a consequence of pre-trial detention in solitary confinement, which had caused mental illness.[c] In support of the claim, the claimant submitted, inter alia, that he had been subjected to torture contrary to article 3 of the European Convention on Human Rights. The Supreme Court found that the pre-trial detention in solitary confinement was the main cause of the claimant's mental illness and awarded compensation.

4.6 On the merits, the State party submits that for an act to be characterized as torture, it must fulfil all the conditions of article 1, paragraph 1, of the Convention. It submits that it cannot be inferred from the wording of article 1 that pre-trial detention in solitary confinement would come, in principle, within the definition of "torture" in article 1. Although the Committee's concluding observations on Denmark's third periodic report notes that the Committee was concerned about the institution of solitary confinement, particularly as a preventive measure during pre-trial detention", it did not state that pre-trial detention in solitary confinement, in principle, comes within the definition of torture.[d] Nor, indeed, can this be inferred from the Committee's jurisprudence.

4.7 The State party submits that solitary confinement is not, and in this particular case was not, effected to obtain information or a confession from the complainant, to punish her for an act she committed or was suspected of having committed, to intimidate or coerce her or a third person or for any reason based on discrimination of any kind. Under the current rules, pre-trial detention in solitary confinement presupposes that there are "specific reasons for assuming, in the circumstances of the case, that the person charged will hamper the prosecution of the case, particularly by removing clues or warning or influencing others", and that "there are specific reasons to assume that the pre-trial detention is not in itself sufficient to prevent the detainee from influencing other persons charged through other inmates or from influencing others by threats or in another similar way".[e] If solitary confinement during pre-trial detention is decided for any other purpose, it would be contrary to the rules of the Act and thus unlawful.

4.8 The State party denies that solitary confinement during pre-trial detention is in principle contrary to article 16 of the Convention. Article 16 supplements article 1, and both articles correspond to the first sentence of article 7 of the International Covenant on Civil and Political Rights (hereinafter the "ICCPR"). Article 7 provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." According to the State party, it can be inferred from the Human Rights Committee's general comment 20 that solitary confinement during pre-trial detention is not in principle contrary to article 7 of the ICCPR, as the general comment states that prolonged solitary confinement of the detained or imprisoned person *may amount* to acts prohibited by article 7" (emphasis added), that is, in *specific cases* depending on the circumstances of the individual case.

4.9 The State party acknowledges that there may be cases in which pre-trial detention in solitary confinement may constitute "cruel, inhuman and degrading treatment or punishment". It invokes the principle adopted by the European Court of Human Rights in considering the possibility of violations of article 3 of the European Convention on Human Rights ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment"). In the case of *Rasch v. Denmark*, it was stated that "when a measure of solitary confinement is considered, a balance must be struck between the requirements of the investigation and the effect which the isolation will have on the detained person. Where solitary confinement is applied, the authorities must therefore ensure that its duration does not become excessive".[f] Under the European Convention, pre-trial detention in solitary confinement may, in certain circumstances, constitute "inhuman treatment".[g]

4.10 In challenging the alleged violations of articles 1, paragraph 1, and 16, the State party describes the complainant's conditions of detention in solitary confinement. The cells of the prison measure approximately 8 m^2 and have television and radio. It is possible to borrow newspapers, and books can be ordered from the Kalundborg Public Library. There are two daily outdoor exercise periods, one in the morning, one in the afternoon, each for half an hour. It is possible to use a fitness room.

4.11 The State party submits that the complainant was not completely cut off from contact with other people during her 50-day period of detention in solitary confinement. She had contact with the prison staff on a daily basis; her parents and children nine times; a social worker twice; the prison physician/doctor six times; the emergency service physician twice; and a psychotherapist three times. She could contact her counsel, a minister of religion or someone from the Prison and Probation Service. From 29 to 30 May 1998, she was hospitalized at the County Hospital of Nykøbing, Zealand; she was brought before the District Court three times in connection with the requests for continued solitary confinement.

4.12 According to the State party, the charge of smuggling against the complainant was of a particularly aggravated nature. At the hearing on 30 April 1998 charges against the complainant related to the smuggling of about 1.1 million cigarettes. This was subsequently extended, and the High Court judgement convicted her of participation in the smuggling of 6.6 million cigarettes. The investigation was comprehensive and difficult. Several individuals were involved in the case, including some who were still at large. For this reason, it was feared that the complainant might warn or otherwise contact these individuals, thus obstructing the investigation. Moreover, solitary confinement was terminated as soon as the investigation was over, i.e. on 18 June 1998, even though the period of her solitary confinement did not expire until 23 June 1998. During the 50-day period, both the District and High Courts considered the question of whether the conditions for solitary confinement were met on six occasions - 30 April, 4, 11, 13, 26 and 28 May 1998. Thus, the State party argues, the courts continuously struck a balance between the requirements of the investigation and the needs of the complainant.

4.13 On the issue of the complainant's mental health, the State party emphasizes that only oral information on her psychological state had been produced before the District Court when it made its order on 26 May 1998. Prior to this date neither written nor oral information had been produced on the state of her mental health. The report of 28 May 1998 was produced in the High Court, when it made its order on the same date, but it did not find that this information was such as to make the complainant's continued detention in solitary confinement disproportionate. The subsequent report of 19 June 1998 was produced at the following hearing on 22 June 1998, when the complainant's solitary confinement had already been terminated. Nevertheless, the Court decided to initiate an examination by a forensic psychiatrist, whose report was submitted at the hearing on 14 July 1998. The Court complied with the recommendation of the report and ordered that the complainant be placed in alternative detention in the Lyng Halfway House, where she could stay with her children.

4.14 On the alleged violation of article 12, the State party submits that it is characteristic of the complaints previously considered by the Committee under this provision that the authorities involved were executive authorities that had carried out actions which could be characterized as torture or ill-treatment, and which had taken place in connection with an arrest or detention.[b] By contrast, the State party is not aware of any case in which article 12 was invoked in relation to decisions made by judicial authorities. The State party argues that the decision on pre-trial detention in solitary confinement was made by an independent and impartial court on the basis of a procedure which fully protected the complainant's right to a fair hearing. In its view, there is no basis for interpreting article 12 in a way that an administrative authority, here the DPP, is obliged to proceed to an investigation in a case where a detainee is dissatisfied with the court decisions in his/her case. Such an arrangement would clearly be contrary to the principle of the ndence of the courts. To the extent that article 12 applies at all in relation to the present laint, the State party reiterates its comments above on the proportionality test used by the in deciding on detention in solitary confinement.

lainant's comments

By submission of 13 October 2003, the complainant submits that an application for leave peal to the Board of Appeal is a mere theoretical possibility. The records of the Board show 1996 (when it was established) and 1999 no grants for leave to appeal were made in cases rning pre-trial detention and solitary confinement; for leave to appeal to be granted, it is sary to prove exceptional circumstances, such as youth or prior mental problems. over, the few cases concerning remand in solitary confinement in which leave to appeal to upreme Court was granted, are unlikely to be overturned. Thus, the complainant argues, stion of domestic remedies is not necessary, as "it is established that the application of stic remedies ... would be unreasonably prolonged or would be unlikely to bring effective to the presumed victim".[1]

The complainant argues that in her merits response below, it is demonstrated that the ion of her rights is not solely attributable to the Danish judiciary but also to the prison rities and the Kalundborg police, for failure to secure her removal from solitary nement, when, as early as 15 May 1998, medical experts did document the devastating ological harm she had suffered through solitary confinement. Furthermore, it is within the of the DPP to initiate investigations of local police districts, such as the Kalundborg police.

On the argument that she should have sought compensation, the complainant submits that rpose in submitting a complaint to the Committee is not to seek compensation, but to ish that the State party violated her rights under the Convention. Denmark is a "dualist" which chose not to incorporate the Convention into Danish law. Consequently, the Danish have no power to hear complaints brought by individuals based on the provisions of the ention. A complaint before the Danish courts seeking to establish a violation of her ention rights would have been futile, thus rendering a compensation claim under n 1018 a (2) an ineffective remedy for an alleged violation of the Convention. The lainant also notes that the Danish courts have consistently refused to acknowledge that s during police custody can entail violations of the Convention and article 3 of the pean Human Rights Convention.

On the argument that her allegations do not fulfil the conditions of article 1, paragraph 1, mplainant submits that the medical evidence, in the form of statements from several rs and therapists in the spring of 1998, demonstrates that she did experience "severe pain uffering", within the meaning of this provision. The serious symptoms experienced by her id to be commonly found in those who have been held in solitary confinement. She refers dies by the Danish NGO "Isolations-gruppen", who have lobbied for the abolishment of ry confinement, to show that persons held in such confinement are more likely to commit le. Therefore, the State party was aware of the "severe pain and suffering" generally ienced by those held in solitary confinement, and particularly in the complainant's case. over, it was aware that the complainant had three young children, a fact which would only ise her pain and suffering to be held in solitary confinement. Ms. Jensen argues that her claim that the State party was aware of the shortcomings of the legislation governing solitary confinement for pre-trial detainees at the time of her remand is supported by the subsequent change in the relevant provisions of the Act.

5.5 The complainant agrees that the purpose of the Act is not to obtain confessions or information, but whether the third requirement of article 1 is fulfilled is not dependent on the wording or purpose of the legislation but rather its effect in the individual case. By interrogating the complainant on 4 and 5 June 1998 in the absence of her lawyer, the Kalundborg police went beyond what her lawyer had authorized them to question her on during counsel's absence. Prior to these interrogations, several doctors and therapists had documented the complainant's deteriorating mental state. It is also alleged that the police investigator tried to force the complainant to confess to being an accomplice to smuggling of hashish, despite there being no evidence for this. Against this background, it is submitted that the Kalundborg police (as a public authority) used the instrument of solitary confinement to obtain information and confessions in such a manner required for the purposes of proving a violation of torture pursuant to article 1.

5.6 The complainant invokes the Committee's concluding observations on several State reports to demonstrate that articles 1 and 16 can be interpreted as including a general prohibition against pre-trial detention in solitary confinement. Thus, in the concluding observations on the fourth periodic report of Denmark, the Committee stated that: "... (c) The State party should continue to monitor the effects of solitary confinement on detainees and the effects of the new bill, which has reduced the number of grounds that can give rise to solitary confinement and its length."[j] It is clear from the Committee's concluding observations that solitary confinement, particularly in cases of pre-trial detention, is considered to have extremely serious mental and psychological consequences for the detainee; States parties are encouraged to abolish the practice. Although abolition is preferable, the concluding observations of the Committee reveal that solitary confinement should be applied only in exceptional cases and not for prolonged periods of time.

5.7 The complainant refers to other review bodies to demonstrate the harmful effects of such confinement, including the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the "CPT") which has produced several reports focusing on this issue. In the CPT's report to the Danish Government following its visit to Denmark from 28 January to 4 February 2002, it stated, inter alia, that "Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible." The Human Rights Committee, which has considered the issue of solitary confinement in the examination of individual complaints, country reports and general comments, has expressed its concern about its practice. Upon consideration of Denmark's fourth period report, it noted, inter alia, "that solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in cases of urgent need; the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with article 10, paragraph 1, of the Covenant. Denmark should reconsider the practice of solitary confinement and ensure that it is used only in cases of urgent necessity."[k]

5.8 The complainant also invokes the case law of the European Court of Human Rights in particular to the judgement, in the case of *McGlinchey and Others v. United Kingdom*,[l] in which the Court found that article 3 "provides that the State must ensure that a person is detained in conditions which are compatible with respect for her human dignity, that the manner and method of the execution of the measure do not subject her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, her health and well-being are adequately secured by, among other things, providing her with the requisite medical assistance".[m]

5.9 As to the claim that the District Court only had oral evidence before it when it assessed the continuation of the complainant's pre-trial detention in solitary confinement on 26 May 1998, the complainant submits that the prison authorities should ex officio have had the complainant examined by a doctor and then requested the Prosecutor to have her removed from solitary confinement, upon learning that she suffered serious psychological harm. In the complainant's view, the State party's liability for the violation of articles 1 and 16 began on 15 May 1998 when the Kalundborg police did not act upon the prison physician's report in which he considered that: "The inmate exhibited clear signs of mental instability, which can be explained freely on the basis of general knowledge on normal people's reaction to incarceration and solitary confinement. I assessed that there was a risk that this condition might become worse and that it was important that the inmate's situation could be resolved as soon as possible." On 22 May 1998, even though the emergency service physician and crisis therapist described the complainant as "… strongly mentally troubled by the solitary confinement" and "claustrophobic, near-psychotic and deeply distressed", respectively, the Kalundborg police still ignored the fact that the complainant was experiencing the harmful effects of her solitary confinement.

5.10 The complainant acknowledges that the nature of the overall criminal operation was serious but emphasizes that she was only a peripheral and minor player and thus not likely to have extensive knowledge about the illegal operations, which were organized by her former husband and his accomplices. Moreover, she cooperated with the police and gave them the name of a suspect whom the police failed to apprehend while at the same time claiming that her removal from solitary confinement would jeopardize police investigations as she might try to contact suspects who had not yet been arrested.

5.11 On the conditions of detention in solitary confinement, the complainant notes that the cell measured 8 m^2 and had no windows, that she had no radio, that TV was only available upon payment of a fee and that she was never informed about the access to certain books from a local library. Whilst she did receive certain visits from her family, the form and duration of those visits were not sufficient to overcome her natural frustration, grief and anxiety.

5.12 With respect to the State party's arguments on article 12, the complainant submits that the Convention is binding on all public authorities in Denmark, including prison authorities and prosecutors. Accordingly, an investigation of the way in which the Kalundborg police and prison authorities handled her case, by repeatedly prolonging her solitary confinement, despite medical evidence demonstrating its harmful effects on her, would not have interfered with the independence of the Danish judiciary. Thus, in the complainant's view, when her representative, an expert in the field of torture identification and research, expressed his professional opinion to the DPP and requested an investigation into these allegations, such an investigation should have been initiated, as prescribed by article 12 of the Convention.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 With respect to the question of exhaustion of domestic remedies and the complainant's initial argument that by failing to respond to her representative's letter to the Director of Public Prosecutions, in which he stated that if he did not receive a response, he would assume that domestic remedies were deemed to have been exhausted, the Committee considers that it is not the function of the DPP to inform counsel on possible or available remedies for an alleged violation, and that no such inference can be drawn from the DPP's failure to do so.

6.3 The Committee notes the State party's arguments that by failing to apply for leave to appeal to the Supreme Court and/or for compensation under the Administration of Justice Act, the complainant has not exhausted domestic remedies. In the complainant's view, both remedies would have been ineffective, as an application for leave to appeal is only a "theoretical possibility" and, in an application for compensation, she could not have invoked her rights under the Convention. On the issue of compensation, the Committee is not persuaded that, in the circumstances of the case, compensation was a remedy that the complainant should have pursued for the purposes of exhausting domestic remedies. As to an application for leave to appeal, the Committee observes that although the complainant claims that an application for leave to appeal may only have been a theoretical possibility, she does concede that leave to appeal has been granted in several cases. The Committee considers that mere doubts about the effectiveness of a remedy do not absolve the complainant from seeking to exhaust such a remedy. For this reason, the Committee finds that the complaint is inadmissible for failure to exhaust domestic remedies, as required under article 22, paragraph 5 (a), of the Convention.

7. Accordingly, the Committee decides:

(a) That the complaint is inadmissible;

(b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a request by or on behalf of the complainant containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision will be transmitted to the complainant, her representative and the State party.

Notes

[a] The State party refers the Committee to the account given in Denmark's fourth periodic report, paras. 117-123 (CAT/C/55/Add.2).

[b] Application No. 45485/99, *Ali Lanewala v. Denmark*.

[c] Danish Law Reports 2000, p. 2385, Supreme Court, U 2000, p. 2385 H.

[d] See *Official Records of the General Assembly, Fifty-second session, Supplement No. 44* (A/52/44).

[e] Section 762 (l) (iii) and 770 a (l) (ii) of the Act, respectively.

[f] Application No. 10263/83, decision of 11 March 1985.

[g] According to the State party, this principle has been followed by the European Court in the following cases: application No. 38321/97, *Erdem v. Germany*, decision of 9 December 1999, and application No. 25498/94, *Messina v. Italy*, decision of 8 June 1999.

[h] The State party refers to *Radivoje Ristic v. Yugoslavia*, complaint No. 113/1998 of 11 May 2001; *Khaled M'Barek v. Tunisia*, complaint No. 60/1996 of 10 November 1999; *Encarnacion Blanco Abad v. Spain*, complaint No. 59/1996 of 14 May 1998; *Henri Unai Parot v. Spain*, complaint No. 6/1990 of 2 May 1995; and *Qani Halimi-Nedzibi v. Austria*, complaint No. 8/1991 of 18 November 1993.

[i] *L.O. v. Canada*, complaint No. 95/1997 of 19 May 2000. The State party also refers to *T.P.S. v. Canada*, complaint No. 99/1997 of 16 May 2000.

[j] CAT/C/55/Add.2.

[k] CCPR/C/DNK/99/4.

[l] Application No. 50390/99.

[m] She also refers to the case of *Price v. United Kingdom*, judgement of 10 July 2001, in which the Court decided that "In considering whether treatment is degrading, within the meaning of article 3, one of the factors which the Court will take into account is the question of whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of violation of article 3."

Communication No. 225/2003

Submitted by:	R.S. (represented by the law firm Henrik Christensen, by Mr. Hans Mogensen)
Alleged victim:	R.S.
State party:	Denmark
Date of complaint:	19 November 2002

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 19 May 2004,

Having concluded its consideration of complaint No. 225/2003, submitted to the Committee against Torture by Mr. R.S. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. R.S., an Indian citizen, who at the time of the initial submission resided in Denmark, where he sought asylum. His current whereabouts are unknown. He claims that his return to India after the rejection of his refugee claim would constitute a violation by Denmark of article 3 of the Convention. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 21 November 2002.

The facts as submitted

2.1 The complainant grew up in Bilga (India), in the Philour area, in the district of Punjab, where he lived together on a farm with his parents and two brothers. All family members are Sikhs. The complainant went to school for seven years, before entering into the family farming business. While his uncle and older brother became members of the Sikh Students Federation and the Khalistan Commando Force (KCF), the complainant did not himself participate in any political or religious organizations. In 1994, the complainant's uncle was killed by the police. The avowed aim of the KCF is to obtain independence for Punjab.

2.2 In 1995, the complainant's older brother returned to India from Germany, where he had applied for asylum. The police arrested and detained him for about 10-12 days after his arrival, and detained him further on several occasions, until he disappeared on an unspecified date. On 15 September 1997, the police contacted the complainant and asked for information on the whereabouts of his brother. When he replied that he did not know his brother's whereabouts, he was arrested and detained for 10 days. He contends that he was subjected to torture in detention. In April 1998, the complainant was again questioned about the whereabouts of his brother by the police; he was allegedly threatened with death if he did not provide this information.

2.3 The complainant was subsequently detained by the police on several occasions, and subjected to torture when in detention. This included beating with a cane, being subjected to electrical shocks, and being hung upside down. According to the complainant, his problems with the police arose from the fact that he transmitted messages sent between his brother and other people from a neighbour village. He was detained 10 to 12 times in total before, in June 1999, he escaped to Denmark, with the assistance of a paid agent.

2.4 The complainant arrived in Denmark on 17 July 1999 without valid travel documents. He applied for asylum the next day. A brother of his already resided in Denmark since 1998, and had been granted a residence permit pursuant to article 7, paragraph 1, of the Immigration Act. The complainant applied for a residence permit under the same regulations, but the Danish Immigration Board rejected his application on 12 February 2001.

2.5 The complainant then appealed to the Danish Refugee Board, which rejected his claim on 28 June 2001. The majority of the Board members did not believe that the complainant risked persecution if returned to India. They considered that the complainant had not been a member of a political organization in India, nor that he had performed any political activity of importance. Furthermore, they considered it unlikely that he had been subjected to torture while in detention, since his description of the events was unclear, and his allegations were not supported by the findings of the Institute for Forensic Medicine (IFM) in Denmark, in a report dated 16 November 2000. The IFM report concluded that the complainant displayed several physical injuries which did not relate to the torture described, but that he felt pain in his left shoulder which could have been caused by the described torture. They also concluded that the complainant suffered from organic brain damage, but no symptoms of a post-traumatic stress syndrome. This finding was supported by a report from the Forensic Psychiatric Clinic dated 30 October 2000.

2.6 When applying for a reopening of his case, the complainant's counsel provided another medical report, from the Amnesty International Medical Group, dated 28 September 2001, which concluded that some physiological findings were compatible with the complainant's description of torture. On 22 July 2002, the Danish Refugee Board rejected the request for review, and the complainant thus is not entitled to stay legally in Denmark.

The complaint

3. The complainant fears that, if returned to India, he will be arrested, and tortured or ill treated in detention, because of his and his brother's links to the Sikh Student Federation and the Khalistan Commando Force. The complainant's repeated experience of detention and torture indicates that he risks such treatment upon return to India, and that his deportation by Denmark therefore would amount to a violation of article 3 of the Convention.

The State party's submission

4.1 On 19 May 2003, the State party submitted its observations on the admissibility and merits of the case. It contends that the claim under article 3 should be declared inadmissible, since the complainant fails to establish a prima facie case. In the alternative, the complaint should be dismissed as unfounded.

4.2 On the facts, the State party submits that the complainant was interviewed with the assistance of an interpreter, and could apply for asylum in his mother tongue. After the rejection of his application, the complainant filed a complaint to the Committee against Torture, and on the same day, he applied for a residence permit on humanitarian grounds to the Danish Immigration Service, which forwarded it to the Ministry of Refugee, Immigration and Integration Affairs. By letter of 12 March 2003, the Ministry replied that it found no reason to postpone the complainant's deportation. However, at the time of the State party's submission, the complainant had not yet been deported, nor had the Ministry decided on his application for a residence permit on humanitarian grounds.

4.3 As to domestic immigration procedures, the State party submits that when the Danish immigration authorities decide on applications for asylum, it assesses the human rights situation in the receiving country, as well as the risk of individual persecution in that country. Therefore, the complainant uses the Committee only as an appellate body, to obtain a renewed assessment of his claim, since the Danish immigration authorities have already assessed whether there are substantial grounds for believing that he would be in danger of being subjected to torture if returned to India.

4.4 In any event, the complainant has not substantiated his fear of being subjected to torture if returned. His statements about torture experienced are inaccurate, and the examination carried out by the Institute of Forensic Medicine in a major centre for rehabilitation of torture victims does not support his version of the events. With respect to the report of 28 September 2001 issued by the medical group of Amnesty International, which concluded that the complainant's symptoms were compatible with the alleged experience of torture, the State party recalls that it appeared from that report that it could not be precluded that the complainant's symptoms had arisen in a manner other than by imprisonment and torture.

4.5 While considering the evidence of torture experienced insufficient, the State party invokes the Committee's jurisprudence, and submits that torture experienced in any event is not sufficient to conclude that the complainant would suffer such treatment upon return to India.

4.6 Finally, the State party argues that it is unlikely that the complainant would be persecuted in India, since his mother lives there without problems, and since he himself after his latest release from detention managed to lease out his property before departing for Denmark.

The complainant's comments

5. By notes of 23 and 29 October 2003, counsel advised the secretariat without giving further details that his client had "disappeared", and that the Committee should base its decision on the information already received.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes that the State party itself does not dispute that domestic remedies are exhausted.

6.2 In respect of the State party's contention that the claim under article 3 should be declared inadmissible, since the complainant fails to establish a prima facie case, the Committee notes the complainant's information about his political activities, that he transmitted messages between his politically active brother and inhabitants of a neighbouring village in Punjab, and that he was detained and tortured by police as a consequence of his family members' political involvement and his own activities. It also takes notes of the medical reports, which are inconclusive about the reasons underlying the complainant's physical and psychological symptoms, and cannot be considered as strong evidence in support of his claim. The complainant has not supported his claim that he was politically active by any documentary or other pertinent evidence, nor has he submitted evidence to explain why the political group he claims to have transmitted messages for was itself targeted by the police. Even if considering that the complainant has been subjected to torture in the past, the Committee finds no reason to consider that he currently is at personal risk of being subjected to such treatment by the police if returned to India. In the circumstances, the Committee observes that the complaint, as formulated, does not give rise to any arguable claim under the Convention.

6.3 Accordingly, the Committee finds, in accordance with article 22 of the Convention and rule 107 (b) of its revised rules of procedure, that the complaint is manifestly unfounded and thus inadmissible.

6.4 Accordingly, the Committee decides:

(a) That the complaint is inadmissible; and

(b) That this decision will be transmitted to the author and, for information, to the State party.

Communication No. 229/2003

Submitted by:	H.S.V. (represented by counsel, Mr. Bertil Malmlöf)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	24 April 2003 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 May 2004,

Adopts the following decision on admissibility.

1.1 The complainant is Mr. H.S.V., an Iranian national born in 1948, currently residing in Sweden and awaiting deportation to Iran. He claims that his forcible return to Iran would amount to a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 25 April 2001, the Committee forwarded the communication to the State party for comments, and requested, under rule 108, paragraph 1, of the Committee's rules of procedure, not to return the complainant to Iran while his complaint was under consideration by the Committee. The State party acceded to this request.

The facts as submitted

2.1 The complainant was a high-ranking officer in the army of the former Shah of Persia. After the Iranian revolution in 1979, he fled to Turkey and subsequently lived in Bulgaria. Between 1993 and 1996, following the arrival of his wife and daughter in Sweden, he unsuccessfully submitted several applications for a residence permit to the Swedish authorities, before he was granted a temporary residence and work permit on 4 February 1997. On 1 June 1999, the complainant was granted a permanent residence permit.

2.2 By judgement of 17 March 2000, the District Court of Norrköping found the complainant guilty of several drug offences and sentenced him to five years' imprisonment. It also ordered the complainant's expulsion from Sweden and prohibited him from returning to the country before 1 January 2015. The Court so decided after having sought an opinion from the Swedish Immigration Board, which concluded that no impediment to the enforcement of an expulsion order existed. The complainant did not appeal the judgement of the District Court.

2.3 The complainant began to serve his prison term on 6 April 2000; he was released on probation on 25 April 2003. During this period, the "Association for the Rights of Children to a Parent Sentenced to Expulsion" submitted two applications, requesting the Government to revoke the expulsion order against the complainant, under chapter 7, section 16 of the

1989 Aliens Act, on grounds of family unity; these requests were rejected on 25 October 2001 and 15 August 2002, respectively. On 24 April 2003, based on a risk assessment made by the Swedish Migration Board, the Government rejected a similar application submitted by the complainant.

The complaint

3.1 The complainant claims that his forcible return to Iran would constitute a violation by Sweden of article 3 of the Convention, since he would run a high risk of being arrested and subsequently tortured, or even executed, upon return to that country, given his past military functions, as well as the fact that he had expressed his political views in public.

3.2 In support of his claim, he submits that, according to Amnesty International and other international human rights organizations, persecution, arbitrary arrests, torture and ill-treatment, unfair and sometimes secret trials, imprisonment and capital punishment of political opponents frequently occur in Iran.

3.3 The complainant submits that he has no relatives and friends, nor any place to stay in Iran, and that he had not returned to that country during the 21 years since his departure. All his family and friends live in Sweden, including his three children, whom he might not see again, given that he will be 67 years old in 2015.

3.4 The complainant claims that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement, and that he has exhausted domestic remedies.

The State party's observations on admissibility

4.1 On 13 June 2003, the State party challenged the admissibility of the communication on grounds of non-exhaustion of domestic remedies and lack of substantiation of the complainant's allegations.

4.2 The State party describes relevant domestic legislation[a] as follows: expulsion on account of a criminal offence constitutes a special sanction for offences, and can be ordered by the court if a convict has been sentenced to a more severe sanction than a fine and if it may be assumed, on the basis of the nature of the offence and other circumstances, that he/she will continue to commit criminal offences in Sweden, or if the offence is so serious that the convict's expulsion is warranted. When considering whether or not an alien should be expelled, the court must consider his or her family circumstances, the period that he or she has resided in Sweden and the question of whether there are impediments to the enforcement of the expulsion order, such as the existence of reasonable grounds for believing he/she would be in danger of being subjected to capital punishment, torture or other inhuman or degrading treatment or punishment upon return to his/her country of origin. The decision of the court of first instance is subject to appeal (and further appeal to the Supreme Court, if leave to appeal has been granted). Pursuant to chapter 7, section 16 of the Aliens Act, the Government may revoke, partly or entirely, a judgement or order for expulsion on account of a criminal offence and grant a temporary residence or work permit, based on circumstances that did not exist at the time of the expulsion order.

4.3 The State party submits that the complainant did not exhaust domestic remedies because he did not appeal the judgement of the District Court of 17 March 2000. Rather, he declared his satisfaction with the judgement, regarding both his prison term and the expulsion order, one day prior to the deadline for lodging an appeal; he thus expressly waived his right to appeal.

4.4 By reference to a decision of the European Commission of Human Rights in a similar case,[b] the State party argues that an appeal to the Court of Appeal (as well as a potential further appeal to the Supreme Court), would have been an effective and reasonably expeditious remedy, which cannot be replaced by the extraordinary remedy under chapter 7, section 16 of the Aliens Act. The complainant did not show that his alleged risk of being tortured and sentenced to death upon return to Iran could not have been raised in the criminal appellate, rather than extraordinary, proceedings.

4.5 The State party argues that, in any event, the complainant failed to substantiate his alleged risk of torture upon return to Iran, for purposes of admissibility. It concludes that the communication is manifestly unfounded and therefore inadmissible under article 22 of the Convention, as well as rule 107 (b) of the Committee's revised rules of procedure.[c]

Complainant's comments on the State party's submissions

5.1 On 29 June 2003, the complainant, in his comments on the State party's observations, submits that he did not appeal the judgement of the District Court, because the State prosecutor had warned him that, in such case, he would appeal the verdict acquitting the complainant's wife, who initially had also been charged with drug offences, and that there was a high risk of her not being acquitted on appeal. Since the complainant did not want to risk the future of his wife and children, he felt compelled to waive his right to lodge an appeal, which in any event was not likely to succeed.

5.2 The complainant reiterates his arguments about the personal risks that he would run, and the general human rights situation in Iran. He argues that the State party would not be able to guarantee his safety if he were to be returned to that country.

Additional submission by State party and complainant's further comments

6.1 On 23 September 2003, the State party rejects as unsubstantiated the complainant's allegation regarding the circumstances under which he waived his right to appeal the judgement of the District Court of Norrköping, and reiterates that the communication is inadmissible, under article 22, paragraph 5 (b), of the Convention, for non-exhaustion of domestic remedies and, in any event, under article 22, paragraph 2, of the Convention, as being manifestly unfounded.

6.2 The State party submits a translation of a statement by the State prosecutor in the complainant's case, to the effect that he never discussed his intention in relation to a possible appeal against the judgement of the District Court with the complainant, given that: (a) the complainant did not speak Swedish; (b) he never contacted defence counsel to reveal his intentions with regard to a possible appeal; (c) although he cannot rule out that counsel for the complainant contacted him to find out whether he would consider appealing independently, he does not remember any such contact; (d) he was content with the judgement and expulsion order against the complainant and, upon reflection, decided not to appeal the acquittal of the complainant's wife; and (e) it would have been impossible for him to appeal the acquittal of the complainant's wife, if the complainant had waited until the last day of the three-week period for lodging an appeal against the sentence and expulsion, as no additional week was available to the prosecution to file a cross-appeal in cases of acquittal.

7. In a submission of 9 October 2003, the complainant reiterates his argument in paragraph 5.1 above and submits that it was probably his lawyer who informed him of the prosecutor's intention to appeal his wife's acquittal if he appealed his sentence. Although his lawyer did not remember whether he had contacted the prosecutor on the issue, the prosecutor himself had not excluded that possibility in his statement to the Committee.

Issues and proceedings before the Committee

8.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

8.2 The Committee has noted the State party's objection that the communication is inadmissible under article 22, paragraph 5 (b), of the Convention, as the complainant failed to exhaust domestic remedies. It has also taken note of the explanation provided by the complainant, and challenged by the State party, that his failure to appeal his sentence was explained by the fact that the prosecutor had warned him that he would appeal his wife's acquittal, should he, the complainant, appeal against his sentence and the expulsion order of the District Court.

8.3 However, the Committee need not pronounce itself on whether the complainant was required to exhaust domestic remedies in the circumstances of the case, as his claim that he would be at a risk of being subjected to torture upon return to Iran because of his employment with the army of the Shah prior to the Iranian revolution in 1979 is pure speculation and fails to rise to the basic level of substantiation required for purposes of admissibility, in the absence of any corroborating evidence. The Committee thus concludes, in accordance with article 22 of the Convention and rule 107 (b) of its revised rules of procedure, that the communication is manifestly unfounded[d] and thus inadmissible.

9. Accordingly, the Committee decides:

(a) That the communication is inadmissible; and

(b) That this decision shall be communicated to the State party and to the complainant.

Notes

[a] Reference is made, in particular, to chapter 4 of the Swedish Aliens Act (1989).

[b] European Commission of Human Rights, decision on the admissibility of application No. 36800/97 (*Heidari v. Sweden*).

[c] The State party refers to communication No. 216/2002, *H.I.A. v. Sweden,* decision on admissibility adopted on 2 May 2003, para. 6.2.

[d] Cf. Communication No. 216/2002, *H.I.A. v. Sweden,* decision on admissibility adopted on 2 May 2003, para. 6.2.

Communication No. 236/2003

Submitted by:	A.T.A. (represented by counsel, Mr. Klaus-Franz Rüst)
Alleged victim:	The complainant
State party:	Switzerland
Date of complaint:	23 September 2003

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 November 2003,

Adopts the following decision on admissibility.

1. The complainant is Mr. A.T.A., a Togolese citizen. He claims that his expulsion by Switzerland to Togo would expose him to a risk of torture after his return, in violation of article 3 of the Convention against Torture. He is represented by counsel.

The facts as presented by the complainant

2.1 In 1996, the complainant, who belongs to the Ewé ethnic minority, joined the "Union des Forces du Changement" (UFC).

2.2 On 27 April 2000, the complainant played for the UFC soccer team in a match against the team of the ruling political party. The UFC team won the game after the complainant had scored the decisive goal. The same evening, two soldiers came to his residence looking for him. While attempting to escape, he allegedly had to dodge bullets fired by soldiers; however, he managed to escape.

2.3 The complainant argues that the security forces in Togo are controlled by the Khabyé ethnic majority and frequently violate human rights, the Togolese Constitution and domestic laws which protect the rights and freedoms of the individual.

2.4 The complainant left Togo, he arrived in Europe and requested asylum in Switzerland on 30 May 2000. On 11 October 2000, the Federal Refugee Office refused his application and ordered his deportation from Switzerland. On 19 November 2001, the Asylum Appeals Commission dismissed his appeal and, on 15 July 2003, it confirmed the decision of the Federal Refugee Office ordering the complainant's deportation. On 18 September 2003, the Asylum Appeals Commission rejected his request to review its decision of 15 July 2003.

The complaint

3.1 The complainant claims that, upon being returned to Togo, he would be arrested and subjected to torture for having sought asylum in another country, as well as for having "humiliated the government in broad daylight" during the soccer match.

3.2 The complainant requests the Committee to order interim measures of protection, to suspend the execution of the deportation order issued by the Swiss authorities.

Issues and proceedings before the Committee

4.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

4.2 The Committee notes that the information submitted by the complainant in substantiation of his claim is general and vague and does not reveal the existence of any personal and foreseeable risk of torture to which the complainant might be subjected in the event of his return in Togo. The bare assertion of membership in a political party, in the instant case of the UFC, and the vague allegation that he was shot at while attempting to escape, do not satisfy the Committee that the threshold of admissibility has been met in the complainant's case. In the circumstances, the Committee observes that the complaint, as formulated, does not give rise to any arguable claim under the Convention.

4.3 Accordingly, the Committee finds, in accordance with article 22 of the Convention and rule 107 (b) of its revised rules of procedure, that the complaint is manifestly unfounded and thus inadmissible.

5. Accordingly, the Committee decides:

(a) That the complaint is inadmissible; and

(b) That this decision will be transmitted to the author and, for information, to the State party.

Communication No. 243/2004

Submitted by: S.A. (represented by counsel, Mr. Ingemar Sahlström)

Alleged victim: S.A.

State party: Sweden

Date of complaint: 4 January 2004

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 6 May 2004,

Having concluded its consideration of complaint No. 243/2004, submitted to the Committee against Torture by Mr. S.A., under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision on admissibility.

1.1 The complainant is Mr. S.A., a Bangladeshi citizen, born on 15 February 1966, currently residing in Sweden, where he has sought asylum. He claims that his removal to Bangladesh[a] upon rejection of his refugee claim would constitute a violation of article 3 of the Convention by Sweden.[b] He is represented by counsel.

1.2 The Special Rapporteur on new communications rejected the complainant's request for interim measures on 21 January 2004.

The facts as submitted by the complainant

2.1 The complainant worked as a Joint Secretary for the Bangladesh National Party (hereinafter referred to as the BNP) in the district of Sutrapur Dhaka. He arranged political meetings, distributed leaflets and otherwise made propaganda for the BNP. His political work made him a well known character in Bangladesh. His brother, who was also involved in politics, is said to have been killed by supporters of the rival political party Awami League in January 1996.

2.2 In 1997, Mr. S.A. participated in a demonstration against the Awami League. He was arrested together with several other persons, and allegedly subjected to torture for two days. In September 1999, while participating in a meeting organized by the BNP, he was again arrested for five days and subjected to torture. The police threatened him to stop his political activity.

2.3 In February 2001, policemen and Awami League supporters allegedly kidnapped the complainant. He was blindfolded, but was aware that his kidnappers brought him to the Sutrapur police station in Dhaka. During the three days' arrest, he was subjected to torture, and urged to withdraw from his involvement in politics, and to tell his mother to drop the murder accusations in the case of his brother.

2.4 The complainant claims that a group of policemen tried to shoot him in March 2001, and that he was falsely accused of murder on 17 October 2000. He subsequently escaped to Sweden, where he applied for asylum to the Migration Board on 11 April 2001. His application was rejected on 11 June 2001, on the basis that the Board did not consider that there was any risk of persecution or torture upon his return to Bangladesh, and that the allegedly false murder accusations would eventually be dealt with in fair and objective proceedings. His appeal to the Aliens Appeal Board was rejected on 25 November 2002.

2.5 A medical certificate from the Centrum for Kris- och Traumacentrum (hereinafter referred to as CKT) dated 19 February 2002, states that the scars found on the complainant's body are consistent with his description of torture, and that the findings strengthen his testimony of being subjected to torture. Another statement from CKT, states that he suffers from a Post-Traumatic Stress Syndrome. On 14 March 2002, the complainant tried to commit suicide by jumping in front of a subway train. He was hit by the train, but got only minor injuries. He was subsequently taken to the hospital and subjected to psychiatric treatment until May 2002.

The complaint

3. The complainant claims that if returned to Bangladesh, there are substantial grounds to believe that he would be subjected to torture, in violation of article 3 of the Convention. In substantiation of this fear, he invokes the instances of previous detention and torture on account of his political activity, and false murder accusations brought against him. He claims that there exists a consistent pattern of human rights violations by Bangladeshi authorities, in particular against political opponents and persons in detention.

Issues and proceedings before the Committee

4.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

4.2 The Committee observes that the main reason for the complainant's fear of a personal risk of torture if returned to Bangladesh is that he was previously subjected to torture on account of his membership in what was then the opposition party the BNP. The Committee notes that the ground for which the complainant was allegedly previously tortured no longer exists, as the BNP is in effect now the ruling party in Bangladesh. Furthermore, the complainant has not submitted information or arguments to substantiate that he personally would be at risk of torture if he were to be imprisoned after his return to Bangladesh. In the circumstances, the Committee observes that the complaint, as formulated, does not give rise to any arguable claim under the Convention.

4.3 Accordingly, the Committee finds, in accordance with article 22 of the Convention and rule 107 (b) of its revised rules of procedure, that the complaint is manifestly unfounded, because the facts argued by the complainant, even if they proved to be true, do not present a prima facie case concerning rights under the Convention. Thus, the Committee finds the complaint to be inadmissible.

5. Accordingly, the Committee decides:

(a) That the complaint is inadmissible; and

(b) That this decision will be transmitted to the author and, for information, to the State party.

Notes

[a] The Convention entered into force for Bangladesh on 4 November 1998, but the State party has not ratified article 22 of the Convention.

[b] The Convention entered into force for Sweden on 26 June 1987, and the State party has ratified the Committee's competence under article 22 of the Convention.
